

Deposition Transcript

Case Number: BC 694 158
Date: February 5th, 2020

In the matter of:

Garvin v City of Los Angeles

Horace Errington Frank

**CERTIFIED
COPY**

Reported by:

Shelly B. Storey
CSR No. 3932

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SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES

RAYMOND GARVIN,)
)
 Plaintiff,)
)
 vs.) NO. BC 694 158
)
 CITY OF LOS ANGELES; and DOES 1)
 through 100, Inclusive,)
)
 Defendants.)

DEPOSITION OF HORACE ERRINGTON FRANK
TARZANA, CALIFORNIA
WEDNESDAY, FEBRUARY 5, 2020

Reported by:
Shelly B. Storey
CSR No. 3932

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES

RAYMOND GARVIN,)
)
Plaintiff,)
)
vs.) NO. BC 694 158
)
CITY OF LOS ANGELES; and DOES 1)
through 100, Inclusive,)
)
Defendants.)
_____)

DEPOSITION of HORACE ERRINGTON FRANK, taken
on behalf of the Plaintiff, at 18801 Ventura
Boulevard, Suite 208, Tarzana, California,
commencing at 2:15 P.M., Wednesday, February 5,
2020, before Shelly B. Storey, CSR No. 3932,
pursuant to Notice.

1 A P P E A R A N C E S :

2
3 FOR THE PLAINTIFF:

4 SALUTE LAW
5 BY: KEVIN SALUTE, ESQ.
6 18801 Ventura Boulevard
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11 LAW OFFICES OF GREGORY W. SMITH
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17 FOR THE DEFENDANTS:

18 OFFICE OF THE CITY ATTORNEY
19 BY: MARIANNE FRATIANNE, DEPUTY CITY ATTORNEY
20 City Hall East
21 200 North Main Street
22 Room 700
23 Los Angeles, California 90012
24 (213) 978-8279

25 ALSO PRESENT:

 RAYMOND GARVIN
 RICHARD BYRD

I N D E X

WITNESS: HORACE ERRINGTON FRANK

PAGE

EXAMINATION BY: MR. SALUTE

5

E X H I B I T S

(NONE OFFERED)

QUESTIONS INSTRUCTED NOT TO ANSWER

PAGE:LINE

42:5

1 HORACE ERRINGTON FRANK,
2 having been first administered the oath,
3 was examined and testified as follows:
4

5 EXAMINATION

6 BY MR. SALUTE:

7 Q Can you please state and spell your full
8 name.

9 A Horace Errington Frank. H-o-r-a-c-e, middle
10 name Errington, E-r-r-i-n-g-t-o-n, last name Frank,
11 F-r-a-n-k.

12 Q Where do you currently work?

13 A I'm currently assigned to the Office of
14 Special Operations as the director.

15 Q And that's for the Los Angeles Police
16 Department; right?

17 A Los Angeles Police Department.

18 Q I know you've had your deposition taken
19 before because I've taken it, only you probably don't
20 remember that, but the person sitting to your right
21 is a court reporter. She's going to take down
22 everything that's said today by you, me or anybody
23 else.

24 A Okay.

25 Q She's administered an oath to you. It's the

1 same oath that's given in a court of law. Do you
2 understand that?

3 A I do.

4 Q Is there any reason why you cannot give your
5 best testimony today?

6 A No reason.

7 Q How many times have you had your deposition
8 taken before?

9 A Gosh. At least 10 times.

10 Q How many times within the last 12 months?

11 A You're the first.

12 Q All right. Fair enough.

13 Well, you're familiar with the admonitions
14 given during depositions; is that fair to say?

15 A Yes.

16 Q So I'll dispense with those admonitions
17 except I will ask this: The court reporter can only
18 take down one of us at a time, so I would appreciate
19 if you would wait until I complete my question before
20 you start talking, and I will do the same and that
21 makes for a clean record; all right?

22 A Understood.

23 Q And the other thing is I have to have an
24 affirmative response, meaning "uh-huhs," "uh-uhs,"
25 shakes of the head, nods of the head, those kinds of

1 things the court reporter can't take down, and if she
2 does, it leaves for an ambiguous response.

3 So when I do ask you a question and you
4 respond like that, I may ask you "yes," "no" or
5 something like that, if you could please state on the
6 record what you meant by that, and I'm not trying to
7 be rude. I'm just trying to have a clean record;
8 okay?

9 A Understood.

10 Q What's your current rank?

11 A Assistant chief.

12 Q And how long have you held that position?

13 A Since September of 2019.

14 Q And before that what was your rank?

15 A Deputy chief.

16 Q And when did you achieve that rank?

17 A I could check the exact date if you'd like.

18 Q Okay.

19 A May of 2017.

20 Q Before deputy chief, what was your rank?

21 A Commander.

22 Q And when did you achieve the rank of
23 commander?

24 A September 2013.

25 Q And as commander, what was your assignment?

1 A I was the assistant commanding officer,
2 Counterterrorism Special Operations Bureau, and I was
3 more focused on the counterterrorism side.

4 Q As the assistant commanding officer of
5 CTSOB -- well, let me just back up a second.

6 Many of these questions I know the answers
7 to and they're kind of background information, so
8 just bear with me so I can just get to some of the
9 background information here; okay?

10 A No worries.

11 Q Now, as the assistant commanding officer of
12 CTSOB, Counterterrorism Special Operations Bureau,
13 did you oversee the emergency services division?

14 A There was a captain who was actually in
15 charge of the division, and they reported -- or she
16 reported to me.

17 Q But that was one of the divisions that was
18 under your command; correct?

19 A That is correct.

20 Q All right. And did you oversee -- well,
21 Emergency Services Division or ESD, was that one of
22 the divisions that was under your command during the
23 entire time that you were a commander?

24 A Yes -- no. I'm sorry. No. When I first
25 became commander, I was assigned to Information

1 Technology Bureau.

2 Q When did you become the assistant commanding
3 officer of Counterterrorism Special Operations
4 Bureau?

5 MS. FRATIANNE: I'm just going to object on
6 Pitchess. His rank history is part of his personnel
7 file. He can answer if we're going to limit it.
8 We're not going back to the beginning of his career.

9 THE WITNESS: September of 2013. So to clarify
10 some of that, September 2013 is when I actually made
11 commander, and then I went to CTSOB in January of
12 2015.

13 Q BY MR. SALUTE: So just to clarify, you were
14 the assistant commanding officer of CTSOB from
15 approximately January of 2015 to May of 2017?

16 A That is correct.

17 Q All right. Emergency Services Division,
18 that was comprised of a couple of different sections;
19 right?

20 A Correct.

21 Q One of them was the Hazardous Materials
22 Device Section; right?

23 A Hazardous Devices and Material Section.

24 Q Otherwise known as the Bomb Squad?

25 A Yeah, but it actually comprises two. You

1 had the Bomb Squad and you had the Haz-Mat Unit.

2 Q And the other section within Emergency
3 Services Division was the Bomb Detection K-9 Section;
4 right?

5 A That's correct.

6 Q And the Bomb Detection K-9 Section, that was
7 the section that is housed at LAX; right?

8 A That is correct.

9 Q And that shares a building or an office with
10 some of the LAX World Police Bomb Detection K-9
11 officers; right?

12 A That is correct, part of the Transportation
13 Security Administration K-9 detail.

14 Q All right. Now, at some point Garvin became
15 the -- well, let me back up.

16 So when you became the assistant commanding
17 officer at CTSOB in January of 2015, was Ray Garvin
18 the lieutenant of On Detection K-9 Section?

19 A Correct.

20 Q So he was already there when you got there.

21 A When I got there, yes.

22 Q And do you recall who the captain was for
23 Emergency Services Division?

24 A When I got there?

25 Q Yes.

1 A That would have been -- I believe it was
2 John Incontro. No, no, no, I take that back.

3 It would have been Rolando Solano because he
4 already replaced -- no, wait a minute. Let me think
5 this through.

6 MS. FRATIANNE: Just your best recollection.

7 THE WITNESS: Yeah, it was Rolando Solano who
8 was there.

9 Q BY MR. SALUTE: So best recollection is it
10 was Rolando Solano.

11 A Right.

12 Q And when you became the assistant commanding
13 officer at CTSOB in January of 2015, did you have any
14 conversations with Rolando Solano about Ray Garvin?

15 MS. FRATIANNE: Vague.

16 You can answer.

17 THE WITNESS: Probably did, but every
18 employee -- just about every employee because that
19 would be part of the incoming debrief with every new
20 command.

21 Q BY MR. SALUTE: Okay. So you had some kind
22 of a debriefing?

23 A I'd have conversations. It could have been
24 about Ray or it could have been about every other
25 person under his command -- all the other supervisors

1 under his command.

2 Q I guess what I'm trying to get at is at the
3 time that you came in to CTSOB, did Rolando Solano or
4 anybody else raise any concerns to you about Garvin's
5 supervising or management of Bomb Detection K-9
6 Section?

7 A I don't have any specific recollection of
8 that.

9 Q Okay. Well, I just want to clarify. When
10 you say you don't have a specific recollection, does
11 that mean you don't recall or does that mean it
12 didn't happen?

13 A I don't recall.

14 Q Fair enough.

15 At any time prior -- well, at some point
16 Kathy Meek or Kathryn Meek became the captain of
17 Emergency Services Division; right?

18 A Yes.

19 Q Do you recall when that was?

20 A I don't remember the exact date.

21 Q I believe she said it was sometime in I
22 believe early -- like March of 2016. Does that ring
23 a bell?

24 A Does not. I don't remember.

25 Q All right. At any time before she became

1 captain, did anybody within Bomb Detection K-9
2 Section, either a supervisor or an officer, raise any
3 concerns to you about Garvin's supervision or
4 management of Bomb Detection K-9 Section?

5 A Again, I don't remember that coming up.

6 Q Did you have any concerns about Garvin's
7 supervision or management of Bomb Detection K-9
8 Section before Kathy Meek became the captain there?

9 A No.

10 Q Did you have any inclination or desire to
11 change him as the lieutenant of Bomb Detection K-9
12 Section before Kathy Meek became the captain there?

13 A I had no inclination or desire to do so.

14 Q So you thought he was doing a fairly decent
15 job?

16 MS. FRATIANNE: Misstates his testimony, lacks
17 foundation.

18 You can answer.

19 THE WITNESS: I had no reason to think -- I had
20 no reason to want to move him.

21 Q BY MR. SALUTE: All right. Well, my
22 question is did you think that he was doing a good
23 job.

24 A Yes. I guess you could say that, yes.

25 Q It's your testimony so --

1 A I guess you can say that because I had no
2 reason to move him. If I didn't think he was doing a
3 good job, then I would have began the process of, you
4 know -- but I had no reason to think that he wasn't
5 doing a good job.

6 Q All right. Fair enough.

7 After Kathy Meek was selected as the captain
8 for Emergency Services Division, did you have any
9 kind of command debriefing with her?

10 MS. FRATIANNE: Vague.

11 You can answer.

12 Q BY MR. SALUTE: I'm just talking before --
13 I'll rephrase it.

14 At some point she was selected for the
15 position; right?

16 A Right.

17 Q After she was selected but before she
18 started, did you have any command debriefing with her
19 about things that were going on in the unit, that
20 sort of thing?

21 A Well, it wouldn't be a debriefing because
22 she hadn't started yet --

23 Q Okay.

24 A -- but I would have had some -- I did have
25 some discussions with her in terms of expectations

1 coming in, which is what I do with any new commanding
2 officer. And the fact is I knew Kathy from before,
3 so yeah, I would have had discussions with her prior
4 to her coming in.

5 Q All right. Do you recall what you discussed
6 with her?

7 A I mean again, general command expectations,
8 you know, but nothing with any specificity that I can
9 recall off the top of my head right now.

10 Q Did you discuss anything with her about what
11 you wanted in terms of the direction of how you
12 wanted the Bomb Detection K-9 Section handled?

13 A Well, that would be part of the discussions
14 or the expectations.

15 Q Well, what do you recall being discussed in
16 terms of giving her some direction or what you
17 desired in terms of how you wanted the Bomb Detection
18 K-9 Section handled?

19 A Again, I don't remember anything specific,
20 but my discussions for anyone coming in -- I can tell
21 you what my discussions with anyone coming into -- as
22 the lieutenant or the captain for Emergency Services
23 Division and not just Bomb K-9 Section but for Bomb
24 Squad, the division as a whole, would be that people
25 have to be held accountable, that we make sure we

1 take care of our employees.

2 One of the things I was always concerned
3 about was coverage, making sure we had the proper
4 coverage. Because it's such a small unit, we had to
5 make sure that we had -- you know, they were flexible
6 and had proper coverage in terms of seven days a week
7 because of our requirements.

8 Those are things I would discuss with her.
9 Obviously overtime is always a big concern. That's
10 something I would have discussed with her, so those
11 kinds of things.

12 Q Did she, during that meeting that you had,
13 discuss with you any issues or concerns that she had
14 with Ray Garvin as a supervisor?

15 MS. FRATIANNE: Lacks foundation, assumes facts
16 not in evidence that there was a meeting that they
17 had.

18 MR. SALUTE: Okay. Fair enough.

19 Q When you had this discussion with Kathy Meek
20 about your expectations, was that in a meeting?

21 A No. It was over the phone. That was the
22 first discussion. Now, down the road, we would have
23 met in person, but this was on the phone.

24 Q I'm just talking about the first discussion.

25 A Telephonic.

1 Q So when you had this telephonic discussion
2 with her, did she express to you any concerns that
3 she had about Ray Garvin as a supervisor?

4 A I don't recall her bringing that up in terms
5 of her concerns about Ray as a supervisor.

6 Q Did she discuss anything about Ray at all?

7 A I think -- I believe whether it was then --
8 I think that was the time when she indicated not
9 necessarily about Ray but the fact that she wanted to
10 move the -- I'm going to call it the vapor wake K9,
11 but there were a couple of K9s that were not part of
12 the TSA program, and she had expressed her desire to
13 move them from under Bomb Detection K-9 given what
14 the responsibilities really were.

15 She wanted to move them from the Bomb
16 Detection K-9 to the Bomb Squad under supervision of
17 the Bomb Squad being Lieutenant Rick Smith.

18 Q They're like the city dogs or something?

19 A City dogs, right.

20 Q Okay. But other than that, she didn't
21 express to you anything about Ray; right?

22 A No.

23 Q Well --

24 A Not that I recall.

25 Q Let me clarify that because it was a

1 double-negative.

2 Other than expressing her desire to move the
3 city dogs to the Bomb Squad, is it fair to say that
4 she didn't mention anything else or mention anything
5 really about Ray?

6 MS. FRATIANNE: Lacks foundation.

7 To the extent you recall.

8 THE WITNESS: To the extent that I recall,
9 nothing specifically about Ray that I recall.

10 Q BY MR. SALUTE: Are you familiar -- first of
11 all, does the Los Angeles Police Department have a
12 retaliation policy?

13 MS. FRATIANNE: Vague as to time.

14 THE WITNESS: Yes, it does.

15 MS. FRATIANNE: Go ahead, you can answer.

16 THE WITNESS: Yes, the department has a
17 retaliation policy.

18 Q BY MR. SALUTE: Did it have a retaliation
19 policy back in 2016?

20 A Yes, it did.

21 Q And did you receive training on that policy?

22 A Yes, I have.

23 Q And what kind of training did you receive?

24 A Well, the department strictly prohibits any
25 retaliatory actions against employees for any reason

1 whatsoever.

2 Q But my question was what kind of training
3 did you receive in regards to the policy.

4 A Well, I was given a copy of the policy, I
5 read the policy. I believe there's also been over
6 the years video training that we've done online that
7 talks about retaliation.

8 Q And are you familiar with what constitutes a
9 protected activity in regards to the retaliation
10 policy?

11 MS. FRATIANNE: Calls for a legal conclusion or
12 opinion.

13 But you can answer if you know.

14 THE WITNESS: Well, I don't know if this answers
15 your question, but I know there are certain
16 activities that employees are allowed to engage in
17 that you cannot retaliate against them for or take
18 any adverse action against them for.

19 Q BY MR. SALUTE: What's your understanding of
20 what those activities are under the Los Angeles
21 Police Department policy?

22 A Well, certainly an employee is allowed to
23 bring any allegations of misconduct that they believe
24 to be misconduct, they are allowed to report it, if
25 they believe there's been some misconduct. An

1 employee is allowed to engage in activities that
2 they're legally allowed to engage in or appropriately
3 allowed to engage in by the department without any
4 adverse actions being taken against them by the
5 supervisors.

6 Just as an example, employees are allowed to
7 take days off; right? So if an employee is scheduled
8 on a day off on a certain day and that person refuses
9 to change their day off for whatever reason, you
10 can't retaliate against the employee because they're
11 refusing to change their day off, so those kinds of
12 things.

13 Q Is reporting a potentially unlawful conduct
14 by a police officer a protected act under the
15 Los Angeles Police Department policy as far as you
16 understand it?

17 A Again, if the employee reasonably believes
18 that what they're reporting is misconduct as opposed
19 to making a false claim, that's a totally different
20 story; right?

21 But if the employee's reasonably believing
22 what they believe to be misconduct, they are
23 absolutely allowed to do so. In fact, they're
24 encouraged to report what they perceive to be
25 misconduct.

1 Q You've said a couple of times the words
2 adverse employment action. What do you mean by
3 adverse employment action?

4 A Well, taking any action against the employee
5 as in something negative; negative action against an
6 employee.

7 Q Like transferring an employee?

8 MS. FRATIANNE: Lacks foundation, vague.

9 You can answer.

10 THE WITNESS: Adverse action as in if I report
11 if an employee choose -- if I as an employee perceive
12 what I believe to be misconduct, I report it to my
13 supervisors, that they can't turn around and start
14 punishing me for whatever reason, whether it's not
15 giving me the kind of days off that I'm asking for,
16 whether it's choosing to get rid of me, getting me
17 out of a unit, those kinds of things.

18 Q BY MR. SALUTE: At some point did you become
19 aware that Ray Garvin had reported one of his police
20 officers of committing potential unlawful conduct?

21 MS. FRATIANNE: Assumes facts not in evidence,
22 lacks foundation.

23 You can answer.

24 THE WITNESS: That's kind of vague.

25 MS. FRATIANNE: And vague.

1 THE WITNESS: One of his police officers.
2 During the time Ray was there, yes, that happened.

3 Q BY MR. SALUTE: So tell me, what do you know
4 about that?

5 MS. FRATIANNE: It's vague, lacks foundation.
6 Do you have something in mind?

7 THE WITNESS: Yeah. One, I think it was Ray
8 had -- I think I was out of town -- got a call from
9 Ray that they believed one of our -- one of the
10 officers, if I'm allowed to mention the officer's
11 name, who was one of the trainers in the training
12 unit and the allegation I believe was that the
13 officer had planted a Kong or something like that
14 that impacted another officer's evaluation.

15 Q BY MR. SALUTE: And did you understand that
16 Ray was reporting that this officer who -- well, you
17 understood he was reporting that one of the officers
18 within his unit was tampering potentially with a TSA
19 evaluation; right?

20 A Correct.

21 Q And did you understand that Ray was
22 reporting something that essentially was to the
23 effect that the officer had engaged in some kind of
24 unlawful conduct?

25 A The officer who was the trainer, yes.

1 Q All right. And what did you understand to
2 be the unlawful conduct that was being reported?

3 A Planting of a Kong that would result in the
4 officer who was being evaluated having his K-9
5 basically going after a false reading, for lack of a
6 better term, a false alert.

7 Q Tampering with an evaluation -- withdrawn.
8 Tampering with a TSA evaluation involving a
9 Bomb Detection K-9 dog; right?

10 A Correct.

11 Q And under Los Angeles Police Department
12 policy, did you believe that Ray had, by reporting
13 that to you, engaged in some kind of protected
14 activity?

15 MS. FRATIANNE: Calls for a legal opinion.

16 THE WITNESS: Well, Ray was doing what he was
17 supposed to do, which is report misconduct or
18 reporting alleged misconduct. That's what he was
19 supposed to do.

20 That's what he did when he made the phone
21 call to us, advised us of what he had discovered and
22 what they were doing.

23 Q BY MR. SALUTE: Right. And under
24 Los Angeles Police Department policy, did you
25 understand that that was engaging the protected act?

1 MS. FRATIANNE: Lacks foundation, calls for a
2 legal conclusion.

3 You can answer.

4 THE WITNESS: Well, I wouldn't use the words
5 "protected act." I would use the words what he's
6 required to do by the department and he is required
7 to report alleged misconduct.

8 Q BY MR. SALUTE: Aren't all police officers
9 within the Los Angeles Police Department required to
10 report alleged misconduct?

11 A When they become aware of it, absolutely.

12 Q Does the fact that they are required to do
13 so change -- well, does that make it a nonprotected
14 act under Los Angeles Police Department policy?

15 MS. FRATIANNE: Vague, lacks foundation.

16 If you understand it, you can answer.

17 THE WITNESS: I really don't understand that,
18 but again, I don't want to use "protected" because
19 again, that's a legal term.

20 But I will use words that the department
21 uses and that is what's required of that employee in
22 terms of reporting misconduct or what they perceive
23 to be alleged misconduct. That's the requirement.

24 Q BY MR. SALUTE: All right. So are you
25 suggesting that Ray did not engage in a protected act

1 by reporting that to you, that's my question, under
2 Los Angeles Police Department policy?

3 MS. FRATIANNE: That's vague, it lacks
4 foundation, calls for a legal opinion and it's been
5 asked and answered.

6 MR. SALUTE: I'll rephrase it.

7 Q Under Los Angeles Police Department policy,
8 is it your belief that Ray was not engaging in a
9 protected act by reporting that misconduct to you?

10 MS. FRATIANNE: Objection. It's becoming almost
11 borderline harassing. He's answered. It lacks
12 foundation and it calls for a legal opinion. The
13 department doesn't use that terminology. That's what
14 he testified to now several times.

15 So you can ask again a different way, but
16 he's already testified about the term "adverse
17 actions" and that calls for a legal conclusion.

18 MR. SALUTE: Fair enough. Let's take a break.

19 (A recess was taken.)

20 Q BY MR. SALUTE: When is the last time that
21 you actually looked at LAPD policy prohibiting
22 retaliation?

23 A I can't give a date the last time I looked
24 at it.

25 Q All right. Isn't it true that the

1 definition -- or the policy talks about -- mentions
2 adverse employment action?

3 MS. FRATIANNE: Lacks foundation, assumes facts
4 not in evidence.

5 THE WITNESS: I don't know. I'd have to see it.

6 Q BY MR. SALUTE: Isn't it true that the
7 policy mentions protected activity?

8 MS. FRATIANNE: Lacks foundation, assumes facts
9 not in evidence.

10 THE WITNESS: Without looking at it -- I'd have
11 to look. I cannot answer that question.

12 Q BY MR. SALUTE: I was able to copy or print
13 out an excerpt of it and I'll provide it to you here
14 and you can take a look at it.

15 MS. FRATIANNE: I'm just going to object on
16 foundation.

17 Q BY MR. SALUTE: First of all, just looking
18 at that, does that appear to be the policy?

19 (Pause for review of document.)

20 A I'm reading it right now.

21 Q Okay.

22 (Pause for review of document.)

23 I'm looking online, too. If you want to
24 check, you can check for yourself. Just for
25 reference purposes, it's Volume I, section 272.

1 (Pause for review of document.)

2 A Okay.

3 Q So does that --

4 A Your question.

5 Q Does that refresh your memory as to what the
6 policy is?

7 A Sure.

8 MS. FRATIANNE: I'm going to have a standing
9 objection as to any questions concerning the piece of
10 paper that you just handed to the witness as to
11 foundation that this document represents the LAPD's
12 retaliation policy currently or at any relevant time.
13 Just a standing objection on foundation.

14 Q BY MR. SALUTE: Does that appear to be the
15 LAPD policy on retaliation?

16 MS. FRATIANNE: Same objection.

17 You can answer if you know.

18 THE WITNESS: It appears to be that.

19 Q BY MR. SALUTE: All right. And isn't it
20 true that in the policy, retaliation is defined as an
21 adverse employment action taken against an employee
22 for engaging in a protected act?

23 MS. FRATIANNE: The document speaks for itself
24 and again lacks foundation.

25 THE WITNESS: That is what's written right here.

1 Q BY MR. SALUTE: Isn't that your
2 understanding of LAPD policy?

3 A Well, based on the exact language that
4 you've shown me, that is exactly what it says and
5 retaliation, as I indicated before, would be to take
6 any adverse action against an employee for doing
7 something that they are legally or by policy allowed
8 to do.

9 Q And that would be for engaging in a
10 protected activity; correct?

11 A So based on the document you -- initially I
12 told you I would not use the word "protected," but
13 based on the document you just gave me, protected
14 activity would include reporting misconduct. So that
15 being the case, the answer would be yes.

16 Q And one of the things that Ray did was
17 report to you misconduct; correct?

18 A That is correct.

19 Q And so under LAPD policy, isn't it true that
20 he engaged in a protected activity under policy 272,
21 policy prohibiting retaliation?

22 MS. FRATIANNE: Same objections.

23 THE WITNESS: So again, I would say the same
24 thing. Based on this document, protected activity
25 includes reporting misconduct and based on that, Ray

1 engaged in protected activity.

2 Q BY MR. SALUTE: Fair enough.

3 And the policy prohibits -- well, are there
4 things that are prohibited under the LAPD policy --
5 well, withdrawn.

6 Well, let me go back to this. So under
7 section 272, the policy prohibiting retaliation,
8 isn't it true that "adverse employment actions" is
9 defined there?

10 MS. FRATIANNE: Same objections. The document
11 speaks for itself.

12 THE WITNESS: Based on the document that I'm
13 looking at, adverse employment action, it gives you
14 the definition of things that are included as part of
15 adverse employment action, gives you a list of things
16 that it would include.

17 Q BY MR. SALUTE: And one of the things that
18 is included as an adverse employment action is change
19 of assignment; correct?

20 MS. FRATIANNE: Same objections. The document
21 speaks for itself. Lacks foundation.

22 THE WITNESS: And based on the document, it
23 says, "Adverse employment actions may include but are
24 not limited to negative performance evaluations,
25 negative employee comment sheets, the imposition of

1 discipline, denial of a pay grade advancement,
2 coveted assignment or promotional opportunity or
3 change of assignment."

4 Q BY MR. SALUTE: Well, I understand what it
5 says here, but that's your understanding of LAPD
6 policy based on the training you received; correct?

7 A Yes.

8 MS. FRATIANNE: Misstates his testimony. He
9 answered.

10 THE WITNESS: Yes, that would be adverse
11 employee actions.

12 Q BY MR. SALUTE: All right. And after
13 reporting the misconduct by one of the officers
14 within his unit, in fact Ray Garvin was subjected to
15 a change of assignment; correct?

16 MS. FRATIANNE: Lacks foundation, assumes facts
17 not in evidence.

18 THE WITNESS: That is not true.

19 Q BY MR. SALUTE: Was he transferred?

20 A Not because of this.

21 Q Was he transferred?

22 MS. FRATIANNE: Vague as to time.

23 THE WITNESS: Do you have a time frame that
24 we're talking about, a specific time that we're
25 talking about?

1 Q BY MR. SALUTE: Well, he was transferred out
2 of your command; right?

3 A He was transferred out of the command, but
4 it had nothing to do with reporting misconduct by
5 officer -- alleged misconduct by Officer Sauvao.

6 Q BY MR. SALUTE: Okay. Well, I appreciate
7 that, but I'm just trying to get first the fact that
8 he was transferred; right?

9 A At some point, yes, Ray Garvin was
10 transferred.

11 Q All right. And that transfer was
12 involuntary; correct?

13 A I would assume so.

14 Q Well, he didn't want to be transferred, did
15 he?

16 A In that case, it would be involuntary.

17 Q Did he ask to be transferred?

18 A No, he did not.

19 Q And in addition to being transferred, he was
20 also downgraded from a lieutenant 2 to a lieutenant
21 1; right?

22 A I subsequently found that out.

23 Q You didn't have anything to do with that?

24 A With the downgrade?

25 Q Yes.

1 A Not to my knowledge, no.

2 Q Did you approve the downgrade?

3 A It's not up to me to approve downgrades.

4 Q Who is it up to?

5 A It's a process that goes through the
6 employee relations administrator, then to the
7 office -- the director of the office of -- at that
8 time it would have been Office of Support Services,
9 and then ultimately the chief of police.

10 Q All right. So is it your testimony that
11 essentially you had nothing do with the downgrade?

12 MS. FRATIANNE: Misstates his testimony.

13 THE WITNESS: I did not request a downgrade.
14 The downgrade reassignment is something different. I
15 requested the reassignment which was ultimately
16 approved by the chief of police.

17 Q BY MR. SALUTE: Okay. So is it your
18 contention that based on your understanding of
19 Los Angeles Police Department policy, Ray Garvin did
20 engage in a protected act but that he was not
21 subjected to an adverse employment action under the
22 policy?

23 MS. FRATIANNE: Vague, lacks foundation,
24 misstates his testimony.

25 THE WITNESS: My testimony is that Ray engaged

1 in a protected act when he reported alleged
2 misconduct by an employee. His subsequent transfer
3 from Emergency Services Division had nothing to do
4 with that act.

5 Q BY MR. SALUTE: But my question is a little
6 bit more pointed to is it your contention that the
7 transfer was not an adverse employment action under
8 LAPD policy?

9 MS. FRATIANNE: Lacks foundation, calls for a
10 legal opinion.

11 If you can answer.

12 THE WITNESS: Read the question again.

13 MR. SALUTE: Can you read that back, Shelly?

14 (The record was read as follows:

15 "...is it your contention that the
16 transfer was not an adverse employment
17 action under LAPD policy?")

18 THE WITNESS: That is correct.

19 Q BY MR. SALUTE: I'm going to put in front of
20 you a document that was submitted with City's motion
21 for summary judgment in this case and it appears to
22 be a declaration signed by you. Can you just confirm
23 that?

24 (Pause for review of document.)

25 THE WITNESS: Yes, I did sign this.

1 Q BY MR. SALUTE: At the time that you signed
2 it, did you -- well, before you signed it, did you
3 read it?

4 A I did.

5 Q Was this the first iteration of this
6 declaration or were there multiple drafts?

7 A This is the one that I read that I signed.

8 Q So kind of a one-shot deal?

9 A I can only tell you this is the one that I
10 read, that I signed. Whether there's more than --

11 Q Before you signed it, was it submitted to
12 you for review and did you have any changes or
13 modifications to it?

14 A I don't remember making -- before I signed
15 it?

16 Q Yes.

17 A I don't remember if I had ever made changes
18 or did anything to it.

19 Q But this version you felt was true and
20 accurate at the time you signed it; right?

21 A At the time that I signed it, I felt it was
22 true and accurate.

23 Q Is there anything in there, as you sit here
24 now having read it, that you believe is incorrect or
25 inaccurate?

1 A Let me look.

2 (Pause for review of document.)

3 MS. FRATIANNE: To the extent you need any of
4 the exhibits that are referenced and purportedly
5 attached to contextualize your response --

6 THE WITNESS: Yeah, I have --

7 THE REPORTER: I'm sorry, I can't hear you.

8 MS. FRATIANNE: To the extent you need any of
9 the exhibits that are referenced as attached to the
10 declaration he's now reviewing, if he needs any of
11 those exhibits to contextualize his response, say so.

12 THE WITNESS: I would like to see the exhibits.

13 MR. SALUTE: Sure. I'll go get them.

14 (A recess was taken.)

15 THE WITNESS: That's not the exhibits.

16 (Documents handed.)

17 Q BY MR. SALUTE: Are those the right ones?

18 A Yes. This one isn't.

19 (Pause for review of document.)

20 Okay. Thank you.

21 Q So now that you've reviewed the declaration,
22 is there anything in it that you believe is
23 inaccurate or needs to be corrected?

24 A There is something that needs to be
25 corrected.

1 Q What's that?

2 A If you go to page 2 of the Declaration,
3 starting at line 8, it says, "The complaint alleged
4 that Garvin had yelled at and made inappropriate
5 comments to subordinates. The reassignment request
6 was made pursuant to the reassignment" --

7 Q Where are we at? Page --

8 A Page 2. Now we're at line 9, "The
9 reassignment request was made pursuant to the
10 reassignment authority granted on the LAPD Department
11 Manual, which authorizes the reassignment of
12 lieutenants based on the immediate needs and best
13 interests of the Department. A true and correct copy
14 of section 763.72 is attached hereto and incorporated
15 herein by reference as Exhibit 1."

16 And then it says on line 13, "I also learned
17 and approved a request to lower Garvin's paygrade
18 based on his failure to satisfactorily carry out the
19 duties of his assignment as the OIC."

20 I was not aware of lowering his pay grade.

21 Q So this statement is incorrect.

22 A That is correct.

23 Q Okay.

24 A And it says exhibit -- "A true and correct
25 copy of the request is attached hereto and

1 incorporated herein by reference as Exhibit 7."

2 Again, I don't recall signing that
3 Exhibit 7.

4 Q All right. Let's look at Exhibit 7. Did
5 you sign it?

6 A No.

7 Q And just for purposes of reference for the
8 record, the document that I'm talking about is the
9 document that's attached as Exhibit 7 to the
10 compendium of exhibits to the motion for summary
11 judgment and it's entitled "Transfer and/or Change in
12 Pay Grade"; correct? That's the document we're
13 talking about?

14 A The document is entitled "Transfer and/or
15 Change in Pay Grade," yes.

16 Q And that's the document you're saying you
17 didn't sign.

18 A I'm looking at it. My signature is not on
19 there.

20 Q Okay. Other than that one statement in your
21 declaration, did you find anything else that was
22 inaccurate or incorrect?

23 A No, I did not find anything that would have
24 been incorrect or inaccurate.

25 Q Now, before the deposition today, did you

1 prepare for today at all?

2 A Yes.

3 Q What did you do to prepare?

4 A I looked at a couple of my notes, I looked
5 at a couple of other documents, reviewed the Letter
6 of Transmittals.

7 Q Anything else besides talking with your
8 counsel?

9 A That was it. I did not go through the
10 entire Complaint. I've got way too many other things
11 going on.

12 Q What notes did you look at?

13 A I looked at my notes regarding a meeting
14 that I had with Ray.

15 Q And where are those notes?

16 A I have a copy of them right here.

17 Q May I see them?

18 A Yes.

19 MS. FRATIANNE: No.

20 MR. SALUTE: Why?

21 MS. FRATIANNE: He's not here to produce
22 documents. He's here to answer questions about
23 documents you show him.

24 MR. SALUTE: I'm entitled to see whatever he
25 reviewed in preparation for his deposition.

1 MS. FRATIANNE: You're entitled to ask about
2 whatever he reviewed, you're not entitled to see
3 whatever he reviewed.

4 MR. SALUTE: That's where you're wrong. So are
5 you instructing him not to let me see those notes?

6 MS. FRATIANNE: I think you have them. I
7 understand they were produced.

8 MR. SALUTE: Well, I disagree, so if -- well, if
9 they've already been produced, then why can't I see
10 them?

11 MS. FRATIANNE: Because he's not here to produce
12 anything and I'm not sure if they've been produced.
13 I thought they were, but if you haven't asked for
14 them... He's not here to produce documents.

15 MR. SALUTE: So you're not going to allow him to
16 see the notes which are sitting in a folder in front
17 of him which he reviewed in preparation for his
18 deposition here today; is that right?

19 MS. FRATIANNE: Let me go off. Let me talk to
20 the witness for a second.

21 MR. SALUTE: So we're off the record.

22 MS. FRATIANNE: Off the record.

23 (Discussion held off the record.)

24 MR. SALUTE: Back on the record.

25 Q What happened to the folder in front of you,

1 sir?

2 MS. FRATIANNE: I'm going to object concerning
3 we had a line of questioning going before we took the
4 break concerning some notes that the witness was
5 referring to and you had asked to see the notes.

6 MR. SALUTE: I didn't ask you a question, I
7 asked him, so let him answer the question; okay? If
8 you have an objection, that's fine, but I'm asking
9 him a question.

10 Q What happened to the folder sitting in front
11 of you, sir?

12 MS. FRATIANNE: I'm going to object because it's
13 harassing, your tone, and you're pointing. If you
14 have a question you'd like to ask him, ask him
15 professionally.

16 MR. SALUTE: I did.

17 Q What happened to the folder sitting in front
18 of you?

19 MS. FRATIANNE: You can answer.

20 THE WITNESS: I put it on the ground.

21 Q BY MR. SALUTE: Can you pick it back up,
22 please?

23 MS. FRATIANNE: No. Objection. Ask your
24 questions, Counsel. Let's move on, ask a question.

25 Q BY MR. SALUTE: Can you put the folder back

1 in front of you, sir?

2 MS. FRATIANNE: I'm instructing the witness just
3 to answer the questions.

4 MR. SALUTE: No, because I'm going to ask him
5 about the documents that he had that were in the
6 folder that he reviewed for the deposition.

7 MS. FRATIANNE: Well, that lacks foundation.
8 How do you know that folder was what he reviewed in
9 preparation for the deposition?

10 Q BY MR. SALUTE: Did you review the documents
11 in that folder in preparation for your deposition
12 today?

13 MS. FRATIANNE: Did you review every document in
14 that folder in preparation for today?

15 THE WITNESS: I did not review every document in
16 the folder.

17 Q BY MR. SALUTE: Okay. Which documents --
18 well, did you review some of the documents in that
19 folder?

20 A I did review some of the documents in the
21 folder.

22 Q Okay. Which documents are in that folder
23 that you reviewed in preparation for your deposition
24 today?

25 MS. FRATIANNE: Vague, ambiguous.

1 Go ahead, you can answer.

2 THE WITNESS: I reviewed my notes, some notes
3 that I had made at a meeting that I had with
4 Lieutenant Garvin.

5 Q ^BY MR. SALUTE: Okay. May I have those
6 notes, please?

7 MS. FRATIANNE: Instruct the witness not to
8 provide the notes that are Pitchess protected and
9 haven't been requested in discovery. And counsel is
10 free to ask anything you want about the notes but
11 he's not here to produce them. If you want to seek
12 them in discovery, that's fine, or a Pitchess motion.

13 Q BY MR. SALUTE: Did you review those notes
14 in preparation for your deposition today?

15 MS. FRATIANNE: Asked and answered.

16 You can answer again.

17 THE WITNESS: I reviewed the notes.

18 Q BY MR. SALUTE: All right. Do you remember
19 verbatim what's on those notes?

20 A No, I do not recall verbatim what's on the
21 notes.

22 MR. SALUTE: If you're not going to have him
23 produce them, then I want him to read verbatim those
24 notes into the record.

25 MS. FRATIANNE: He's not going to do that,

1 Counsel.

2 MR. SALUTE: Why?

3 MS. FRATIANNE: Ask a question about the notes,
4 what's contained in the notes. He's not going to
5 read them into the record.

6 MR. SALUTE: Okay.

7 Q Tell me exactly what it says on the notes.

8 MS. FRATIANNE: Harassing. Objection. Ask a
9 question specifically about the notes.

10 MR. SALUTE: I just did. What's the game we're
11 playing here?

12 MS. FRATIANNE: There's no game, Counsel.
13 There's a way to get documents and there's a wrong
14 way to get documents. This isn't the way to get
15 information. Ask him about it. He's here, he's here
16 to testify. Ask him about the meeting, the notes he
17 took.

18 MR. SALUTE: Okay. That's fine. You know what?
19 That's fine.

20 Q Tell me everything that you recall about
21 those notes.

22 MS. FRATIANNE: About the notes or --

23 MR. SALUTE: Yes, the notes.

24 MS. FRATIANNE: -- the meeting?

25 MR. SALUTE: The notes. I said the notes.

1 That's what I said. Okay?

2 We're going to sit here and play games and
3 do all this, that's fine, but you're being
4 obstreperous for absolutely no reason and the law
5 provides that I am entitled to every document relied
6 upon in preparation for the deposition. You have no
7 law on your side. You're absolutely wrong there, and
8 you're just doing it to prevent me from taking this
9 deposition, which is fine, I'll just move to compel
10 and you'll pay sanctions. That's perfectly fine.
11 Okay.

12 MS. FRATIANNE: You can answer.

13 Q BY MR. SALUTE: And so will you, but that's
14 fine. Go ahead, tell me everything you remember
15 about those notes. What's on those notes, sir?

16 A I can tell you what I remember about the
17 meeting.

18 Q I want to know what's on the notes and then
19 you can tell me about the meeting.

20 A Well, what's in the notes is based on the
21 meeting. As I recall, Ray came into my office. Ray
22 requested a meeting with me to talk about a comment
23 card that he had received from Captain Meek.

24 Present at the meeting also, he came to my
25 office. Present at the meeting was Captain Sambar.

1 One of the issues that he brought up is that he felt
2 that -- he had some concerns about Captain Meek
3 coming there.

4 He went to at the time Captain Incontro and
5 told him about his concerns about Captain Meek coming
6 there and he felt he was going to be retaliated
7 against because Captain Meek knew -- or Captain Meek
8 was friends with Tom Deluccia, one of the officers at
9 the Bomb K-9 Section, and he felt that Deluccia would
10 use Meek as a hammer against him. And Incontro told
11 him that Meek was not coming to the division.

12 The conversation continued that he had
13 concerns that I was not happy about him, and I asked
14 him "Why would you think that I wasn't happy about
15 you?"

16 One of the things he said is because I'm
17 doing off-hour inspections at Bomb K-9 Section and I
18 was reviewing the days off, which I explained to him
19 that that was my job. I do off-hour inspections to
20 my command and days off was my prerogative, I get to
21 review them to make sure that we have proper
22 deployment.

23 He mentioned something about Captain Meek
24 restricting his ability to -- because of the comment
25 card that he got that he was -- restricted his

1 ability to, for lack of a better term, not set policy
2 to run his division, and I told him that that was her
3 prerogative, she gets to set the tone for the
4 sections within our command as long as it's not
5 illegal or improper.

6 He brought up an issue about -- when he
7 talked about this whole issue about retaliation, I
8 asked him specifically what -- did you have anything
9 in particular. He could not say.

10 Captain Sambar did ask him if you bring a
11 retaliation to our attention, why now if this is
12 something that happened before and are you reporting
13 misconduct?

14 The -- I don't remember his exact words, but
15 basically he backed away and he said, "No, I'm not
16 reporting misconduct," but these are just concerns
17 that he had.

18 He brought -- he did during the conversation
19 mention that he had heard that Meek was having an
20 affair or an affair with -- with Tom Deluccia.
21 That's something that he had heard but had no
22 evidence of it.

23 Let me see what else. He talked about the
24 fact that he thought that he was being treated
25 different than the other lieutenant because -- or the

1 other supervisor because he didn't think he had
2 access to her in terms of meetings, but he never
3 did -- when I asked him "Did you request to meet with
4 her," and he indicated "No, he didn't," so I
5 suggested to him that he make -- that he make a
6 request to speak with her and obviously if she told
7 him no, then that would be a different story.

8 So he indicated that he would do that, reach
9 out to her. He said that he would reach out to her
10 and try to clear the air -- or I told him to reach
11 out. Either he said -- so I told -- but the
12 discussion was about reaching out to her since he had
13 not reached out to her to clear the air.

14 Again, the issue with regards to him feeling
15 that I didn't -- that I had some issues with him, he
16 said he just wanted to clear the air and practice
17 what he preaches in terms of going straight to the
18 source. That's why he wanted to come talk to me. He
19 wanted to make sure there's no issues because he
20 enjoyed working for me and that was the sum and
21 substance.

22 Q The notes that you took of this
23 conversation, are these handwritten notes?

24 A Those were handwritten notes.

25 Q And where did you keep those notes?

1 A So whenever I have meetings -- not always
2 but depending on what the issues are, I will keep a
3 notebook of various meetings that I have, various
4 meetings.

5 Q Were those notes put into any personnel
6 file?

7 A No, they were not in any personnel file.

8 Q Were they put in any disciplinary file?

9 A No.

10 Q Are they mentioned in any personnel file as
11 far as you know?

12 MS. FRATIANNE: I'm going to object on Pitchess
13 grounds.

14 You can answer.

15 THE WITNESS: Are they mentioned in any
16 personnel files?

17 Q BY MR. SALUTE: Correct.

18 A No, not in any -- well, they're not in any
19 employee's -- they're not in -- they're not in Ray's
20 personnel file if that's what you're asking.

21 Q Were they put in any other employee's
22 personnel file as far as you know?

23 A In an employee's personnel file?

24 Q Correct.

25 A No.

1 Q Did you supply those notes to anybody?

2 A I did.

3 Q Who did you supply them to?

4 A Internal Affairs.

5 Q And that was in connection with the

6 complaint that was made by Ray?

7 A Correct.

8 Q And were those notes generated

9 contemporaneously with your conversation or did you

10 make them after the conversation?

11 A They were generated contemporaneous because

12 I had my book, I was taking notes as I was speaking

13 with Ray.

14 Q And was it your intention at the time you

15 took those notes to provide them to somebody else or

16 you were just taking them for yourself?

17 A Just taking them for myself.

18 Q Okay. I'll get back to that meeting in a

19 second.

20 What other documents did you review in

21 preparation for today? You said you reviewed notes,

22 documents and Letters of Transmittal. What documents

23 did you review?

24 A Well, the Letters of Transmittal is one of

25 the documents.

1 Q Okay. Well, you broke it down in three
2 different ways: Notes, documents and Letters of
3 Transmittal.

4 A I would have included the Letter of
5 Transmittal under the documents because the Letter of
6 Transmittal were part of the personal complaint.

7 Q Other than the Letters of Transmittal, what
8 other documents did you review besides the notes?

9 A I looked at (indicating).

10 Q Your Declaration?

11 A My Declaration.

12 Q So we have your Declaration, the Letters of
13 Transmittal and your notes. Anything else that you
14 reviewed?

15 A I think I did look at the -- not necessarily
16 today but sometime I did look at the request to
17 reassign. Request for reassignment.

18 Q All right. So which documents do you have
19 of these things that you reviewed in that folder?

20 MS. FRATIANNE: Objection. Irrelevant.

21 THE WITNESS: I have all of them.

22 Q BY MR. SALUTE: You have the notes, you have
23 the Letters of Transmittal and you have the
24 Declaration and you have the request for
25 reassignment.

1 A I don't think I have the Declaration.

2 Q So you looked at that separately?

3 A Yes.

4 Q Did you review any complaint investigation
5 reports?

6 A I think I saw maybe a page or two out of
7 some of them, but I did not review them in their
8 entirety.

9 Q Where did you see those?

10 A I'm sorry?

11 Q Where did you see those?

12 A I have them. I have one of them.

13 Q That's contained in the folder that you
14 have?

15 A Yes.

16 Q Which complaint report -- or investigation
17 report did you review, for which complaint?

18 A It would have been -- again, I only skimmed
19 a couple of pages, so I think one of the pages I
20 looked at had to do with --

21 MS. FRATIANNE: Don't use names.

22 THE WITNESS: -- the allegations against Ray.

23 Q BY MR. SALUTE: Okay. Well, there were two
24 complaints that were made against him; right?

25 A Yeah.

1 Q All right. So I'm asking you which
2 complaint investigation report did you review?

3 A I did not review the entire report. I
4 looked at a page or two, and it would have been the
5 one involving allegation -- I can't call the name, so
6 that would make me have to differentiate between the
7 two.

8 Q Well, you can say who the complainants were.
9 MS. FRATIANNE: Go ahead.

10 THE WITNESS: The complainants were Franco and
11 Salinas.

12 Q BY MR. SALUTE: Which pages did you review
13 of the complaint --

14 A I have no idea.

15 Q Why did you look at those pages?

16 A Because they're part of the package that I
17 had.

18 Q Why didn't you look at the whole thing I
19 guess is --

20 A I did not have the time to look at the
21 entire investigation. As I indicated, I just skimmed
22 it.

23 Q When did you do that?

24 A This morning.

25 Q Did you write any notes on any of the

1 documents that you reviewed in preparation for your
2 deposition today?

3 A No.

4 Q So basically you looked at copies -- well,
5 did you look at your original notes?

6 A Which notes are you talking about?

7 Q The original notes that you took of your
8 meeting with Ray. Did you look at your original
9 notes? Do you have those or are you talking about a
10 copy of the notes?

11 A Copy.

12 Q Did you give the original notes to Internal
13 Affairs?

14 A Yes.

15 Q So you only maintained a copy?

16 A I gave the notes to Internal Affairs. I'm
17 not sure -- I don't remember if they took a copy of
18 it and gave me back the original book because, again,
19 that was -- what was in my book is everything else
20 that I keep for all of my other work related, so they
21 made copies.

22 Q All right. And did you review the entire
23 letters of transmittal?

24 A Not the entire letters of transmittal, no.

25 Q Did you just skim through them?

1 A Skimmed through them.

2 Q Both of them?

3 A I don't -- at least one. I don't think I
4 skimmed through both of them. I looked at one of
5 them.

6 Q Which one did you look at?

7 A I think I looked at the one where the
8 allegations against Ray, some were unfounded, some
9 were not resolved.

10 And again, skimmed it. I looked more at the
11 adjudication page but in terms the -- yeah, I looked
12 more at the adjudication page than anything else.

13 Q Okay, but I'm just trying to focus on was it
14 the one that was the Franco/Salinas complaint or was
15 it the Sauvao complaint?

16 A It was more a Franco/Salinas complaint, and
17 I think -- I'm not sure -- well, I think I looked at
18 the complaint, the adjudication for the Sauvao.

19 Q And your purpose in doing so was just to
20 refresh your memory?

21 A I was just skimming through what was in the
22 folder.

23 Q To refresh your memory?

24 A Yes.

25 Q Did it help refresh your memory?

1 A Sort of because I didn't look at the whole
2 thing.

3 Q I want to get back to that meeting with Ray,
4 and you said it was you, Ray --

5 A Captain Steve Sambar.

6 Q Sanbar and who else? Just the three of you?

7 A Just the three of us.

8 Q All right. Now, when a police officer like
9 Ray says something to you like what Ray said about
10 what's going on in a unit, does he have to say he
11 believes something is misconduct in order for it to
12 be misconduct under LAPD policy?

13 MS. FRATIANNE: Incomplete hypothetical, lacks
14 foundation.

15 You can answer.

16 THE WITNESS: I can't answer it because I don't
17 know exactly what you're talking about what Ray said.

18 Q BY MR. SALUTE: Let me ask it this way:
19 Somebody comes and talks to you and you get the
20 inclination that they're kind of hinting at
21 misconduct; okay? And you ask them, "Are you
22 reporting misconduct?"

23 Do they have to say yes in order for you to
24 take it as misconduct that they're reporting?

25 MS. FRATIANNE: Incomplete hypothetical, lacks

1 foundation, calls for speculation.

2 THE WITNESS: You are going to ask me to
3 speculate because it depends on what it is the person
4 is telling me.

5 If the person outright tells me misconduct,
6 then I don't need to ask him are you reporting
7 misconduct; right?

8 Q BY MR. SALUTE: Well, when Ray had this
9 meeting with you, what did you believe that he --
10 well, why did you ask him, "Are you reporting
11 misconduct?"

12 A I believe the person -- I think it was
13 Captain Sambar who asked him, "Are you reporting
14 misconduct and why now?"

15 And I can't remember if I actually asked him
16 that day if I didn't because I wasn't clear of what
17 he's trying to tell me.

18 Q Did you think that at the time he was saying
19 whatever he was saying that it could possibly
20 constitute misconduct under LAPD policy?

21 A It could possibly. That's why I wanted
22 clarification from him.

23 Q At any time during this conversation, did
24 you believe that he did in fact report anything that
25 could constitute misconduct under LAPD policy?

1 A He did not report misconduct to me. That's
2 what I was trying to clarify from him. Depending on
3 what he said, if I got that understanding, then it
4 could, but I could not make that decision.

5 Q And under LAPD policy, did you believe that
6 he had engaged in any kind of a protected act at any
7 point during that conversation?

8 A The conversation that he was having with me?

9 Q Yes.

10 A Yes, he was totally protected and
11 appropriate to have that discussion with me.

12 Q What protected act did he engage in when he
13 had the conversation with you?

14 A He was voicing his concerns to me what he
15 perceived, that he had concerns in terms of whether
16 or not I was -- you know, didn't have faith or trust
17 in him, in his ability. He has a right to say that.

18 He had concerns about what he told me about
19 the discussion he had with Captain Incontro, about
20 his concerns about Captain Meek coming there and him
21 expressing to Captain -- and based on what he's
22 telling me, he expressed to Captain Incontro that he
23 was concerned he would be retaliated against if
24 Captain Meek came there. That is protected. He has
25 a right to say that to Captain Incontro.

1 Captain Incontro advised him that Captain
2 Meek was not coming to Emergency Services Division,
3 that instead it was a different employee.

4 There's nothing in our discussion that I
5 just articulated that was inappropriate or that he
6 had every right to say those things and have that
7 discussion with me.

8 Q Does the LAPD have any kind of policy
9 against discriminatory conduct?

10 MS. FRATIANNE: Vague.

11 THE WITNESS: The LAPD has a policy against
12 discrimination, absolutely.

13 Q BY MR. SALUTE: When Ray had his
14 conversation with you with Captain Sambar, did he say
15 anything to you that led you to believe that he was
16 reporting any kind of violation of the policy against
17 discrimination?

18 MS. FRATIANNE: Lacks foundation.

19 You can answer.

20 THE WITNESS: Run that by me again.

21 MR. SALUTE: Can you read that back, please?

22 (The record was read as follows:

23 "When Ray had his conversation with
24 you with Captain Sambar, did he say anything
25 to you that led you to believe that he was

1 reporting any kind of violation of the policy
2 against discrimination?")

3 THE WITNESS: No. That's what I was trying to
4 ascertain from him as I indicated earlier.

5 Q BY MR. SALUTE: Do you recall during that
6 meeting that Sambar told Garvin something to the
7 effect that if he was, in fact, reporting a hostile
8 work environment or retaliation that the department
9 would charge him for failing to report misconduct?

10 A I can tell you that never happened, not in
11 my presence.

12 Q So if Ray says that occurred, you're denying
13 that ever occurred; right?

14 A I'm telling you that never happened in my
15 presence.

16 Q Well, did you ever leave the room?

17 A No, not during the meeting.

18 Q And if that did occur, is that something you
19 would have written in your notes?

20 A Absolutely, and I would have heard it if it
21 did occur.

22 Q And can you review your notes to make sure
23 that that isn't reflected in your notes anywhere?

24 A I can tell you it's not in my notes and it
25 did not happen.

1 Q Did you ever talk to Ray about changing his
2 response to the comment card?

3 A A little more.

4 Q Okay.

5 A I'm sorry, but I have --

6 Q This meeting came up because Ray got a
7 comment card from Captain Meek; right?

8 A Yes.

9 Q Okay. And were you aware that Ray had
10 responded to the comment card?

11 MS. FRATIANNE: Assumes facts not in evidence.

12 THE WITNESS: I'm not sure at the time of the
13 meeting if I was aware that Ray had responded. I
14 don't remember that. I don't remember that.

15 Q BY MR. SALUTE: Okay. When you say you
16 don't remember, meaning it didn't happen or you just
17 don't recall?

18 A I just said I don't remember.

19 Q Okay. I'm not trying --

20 A No, no. I'm just saying -- totally got you.
21 I know you're not trying to harass me. I just don't
22 remember if he had -- if I was aware of a response by
23 him at that time.

24 Q Fair enough.

25 At some point did you learn that he had in

1 fact provided a response?

2 A I'm not sure. I believe he did provide a
3 response to him.

4 Q Did you ever see it?

5 A I don't remember seeing the response.

6 Q Did you ever talk to him about it, the
7 response?

8 A The only time I talked to Ray about this
9 whole issue was through that meeting, and everything
10 I just told you about, the one thing I remember
11 telling him is that when he brought the issue about
12 not having the access piece to her, I said, "Well,
13 did you request to meet with her? Why don't you try
14 doing that."

15 And then there's the issue about with
16 regards to the specifics of the comment card, he
17 talked about him not allowing -- or her telling him
18 to not make these kinds of decisions, and it's right
19 there in the comment card.

20 And I did address that issue, that section
21 of the comment card, I addressed that issue with him
22 and that she had a right to -- you know.

23 Q Did Captain Meek consult with you about
24 giving the comment card before she issued it as far
25 as you recall?

1 A I'm pretty sure she did.

2 Q Do you remember what she talked to you
3 about?

4 A Well, one of the issues that she talked
5 about was him coming up with policies relative to
6 bomb K-9 without consulting with her because she
7 claimed that she had those discussions with him in
8 the past.

9 Q Anything else that you recall she had
10 concerns with regarding that comment card?

11 A Off the top of my head.

12 Q No?

13 A You're talking about the prior discussions,
14 prior to her writing the comment card.

15 Q Correct.

16 A Off the top of my head, I can't remember the
17 other stuff. I knew she had talked about concerns
18 that she had with him, and I asked her, "Well, did
19 you ever document any of these?" and she said no.

20 I said if you have concerns, you got to meet
21 with him and discuss them and you got to document
22 them, so that was the first comment card.

23 I think that was the first one that I had
24 seen her document about him that she had concerns
25 about things he had done in the past.

1 Q But you don't recall what they were?

2 A I can't remember off the top of my head what
3 those were.

4 Q All right. And at some point you became
5 aware that there was this Franco/Salinas complaint
6 against Ray; right?

7 A I was, yes.

8 Q And how did you first become aware that
9 there was this complaint?

10 A I believe Kathy Meek was meeting -- I think
11 Franco requested a meeting with Kathy Meek and told
12 her about this issue of Ray -- I think Ray yelling at
13 him or cursing him or, you know, chastising him for I
14 guess not taking his --

15 It sort of started with the connection
16 between the incident with Sauvao and the King Kong.
17 I guess Ray had brought -- Franco had went to Ray and
18 made -- told Ray his concerns.

19 Ray confronted Sauvao. There was a meeting
20 with the supervisors there. When Ray brought Sauvao
21 and talked to him and told him what he had to and
22 then had a meeting with Franco, and Franco sort of,
23 for lack of a better term, back-pedaled on what he
24 initially told Ray, so Ray felt Sauvao made this big
25 deal and then all of a sudden back-pedals it.

1 According to Franco, Ray addressed him as
2 you MFer, and then Franco also at that time told
3 Captain Meek about a discussion that he had with
4 another female.

5 I think her name is Salinas, the female K-9
6 officer, who they went through this whole thing about
7 the incident between Ray and the K-9 officer, how she
8 felt that Ray said something to her about being
9 pregnant, and so that was brought up to Captain Meek
10 from Franco.

11 Q And then how was it brought to you is what
12 I'm getting at.

13 A I'm getting there.

14 Q Okay.

15 A I just want to give you the full context.

16 Q Got it.

17 A So Captain Meek reported all that to me, and
18 I told her, "Have you spoken to Salinas?"

19 She said "No."

20 "Then you need to have a discussion with
21 Salinas because now you're only going by what Franco
22 said."

23 So her intention was to meet with Salinas
24 that following week, and based on her meeting with
25 Salinas to confirm these other statements, we

1 initiated a personnel complaint.

2 Q So was it your decision to initiate the
3 compliant or a combined decision or a joint decision
4 between you and Meek and somebody else?

5 A It was all a combined decision because they
6 were both made aware of misconduct, so that's the
7 responsibility, to be made aware of it.

8 Q After you became aware of this, did you
9 contact Employee Relations Group?

10 A At some point after, yes. Not immediately.

11 Q Okay. Who is the one that initiated the
12 complaint? Meek or you or who?

13 A Well, it was issued by Franco and Salinas.

14 Q But who actually contacted Internal Affairs
15 or Employee Relations Group?

16 A Well, Employee Relations Group has nothing
17 to do with the complaint, initiating the complaint,
18 you know, documenting the complaint.

19 Kathy, I'm not sure if she did or one of her
20 lieutenants had someone cut the face sheet, and then
21 from there it goes to Internal Affairs.

22 Q Okay. But you didn't cut the face sheet;
23 right?

24 A I personally, no. I wouldn't cut a face
25 sheet personally.

1 Q But you and Captain Meek agreed that that's
2 what should be done; right?

3 A That is correct, and when she confirmed with
4 me her meeting with Salinas, I think she may have
5 already -- face sheet may have already been cut
6 because she confirmed that meeting with Salinas.

7 MS. FRATIANNE: "She" meaning Meek.

8 THE WITNESS: Meek. I'm sorry, yes, Meek.

9 Q BY MR. SALUTE: Now, prior to Captain Meek
10 coming to you with these allegations by Franco, had
11 you been made aware of any other misconduct by Ray
12 Garvin before that? In other words -- let me
13 rephrase that.

14 Was there any conduct by Ray Garvin prior to
15 Meek coming and talking to you about these -- you
16 know, the Franco/Salinas complaint that caused you
17 concern that it may be misconduct by Ray?

18 A Prior to this?

19 Q Yes.

20 A No, no.

21 Q And --

22 A Let me take that back. You said caused me
23 concern or was it reported as misconduct? Because
24 concern and misconduct are two different things.

25 Q Well, was there any conduct prior to the

1 Salinas/Franco allegations of misconduct that you
2 believe constituted any kind of misconduct by Ray?

3 A No.

4 Q Was there any conduct by Ray before -- and
5 by "Ray," I mean Ray Garvin -- before the
6 Franco/Salinas complaint was made known to you that
7 caused you some concern in terms of his leadership of
8 the Bomb Detection K-9 Section?

9 A Well, again, you'd have to go back to the
10 issue with the comment card that Kathy wrote, the
11 comment card written on Ray Garvin by Captain Meek,
12 and that would certainly go to the issue of concerns
13 that she had with leadership or management or
14 supervision.

15 Q But nothing in terms of misconduct; right?

16 A That is correct, nothing in terms of
17 misconduct.

18 Q And nothing that led you to believe that Ray
19 needed to be removed; right?

20 A Other than -- no. Other than the
21 allegations of misconduct? No.

22 Q Right. Let's just clarify that. Prior to
23 the Franco/Salinas complaint coming to you -- or
24 coming to be known by you, there was no conduct by
25 Ray Garvin that led you to believe that he needed to

1 be removed as a supervisor of bomb detection section
2 K-9 section; right?

3 A That is correct.

4 Q Now, at some point did you see a copy of the
5 complaint investigation report for the
6 Franco/Salinas?

7 A I saw the investigation.

8 Q Were you kept apprised of what was going on
9 during the investigation?

10 A No, because I think that was done by
11 Internal Affairs.

12 Q All right. And what about the -- would the
13 same be true of the complaint that was made by
14 Sauvao, you were not kept apprised of the
15 investigation during its pendency?

16 A They would notify me about the initial
17 intake. I don't recall having meetings with Internal
18 Affairs about stepping away during the course. I
19 don't remember that. If they did, it was not much --
20 not too significant. A meeting that is.

21 Q So essentially just in terms of -- I'm going
22 to be referencing other depositions -- the
23 Franco/Salinas complaint by its Internal Affairs
24 number, and I kind of shortened it to 419; okay? So
25 I referenced it as the 419 complaint.

1 A All right.

2 Q So before the 419 complaint was completed,
3 is it fair to say that you had no information
4 regarding the status of the investigation?

5 A Not that I specifically recall. I mean,
6 if -- I know Internal Affairs has -- there are times
7 when they would brief us on pending complaints, how
8 they're going. I don't know if there was one done
9 specifically for this. I just don't. It may have,
10 but just don't remember one.

11 Q I'm not trying to belabor the point. I
12 wanted to clarify it for the record because I didn't
13 reference it earlier in terms of the number.

14 So I'm going to ask you the same thing for
15 the Sauvao complaint, which is referenced as the 614
16 complaint; okay?

17 A Okay.

18 Q Before the --

19 A That's the Sauvao complaint against Ray?

20 Q Correct.

21 A Okay.

22 Q So before the completion of that
23 investigation, again, were you updated regarding the
24 status of that complaint investigation, the 614
25 complaint?

1 A May have, but I don't remember.

2 Q All right. Fair enough.

3 At some point did you learn that that
4 complaint was -- let me ask it this way.

5 At some point did you become aware that the
6 419 complaint, the Franco/Salinas complaint, had been
7 completed?

8 A Yes.

9 Q And how did you become aware that it had
10 been completed?

11 A Well, I may have -- well, when the
12 complaints are completed, they get sent to the
13 division for proposed adjudication.

14 Q Would that have been --

15 A Emergency Services Division, Captain Meek.

16 Q And then after it went to Meek, did she send
17 a copy to you at some point?

18 A Well, she would -- she would send the entire
19 complaint with her Letter of Transmittal, which is
20 her recommendation to the bureau for us to review and
21 whether or not we concur with it or something like
22 that.

23 I think also in both these cases, because of
24 the nature of these complaints, she may have -- we
25 may have discussed preliminarily, you know, the

1 adjudication of them, how were they adjudicated, that
2 kind of thing. There may have been discussions.

3 Q That was going to be my next question.
4 Thank you.

5 So do you recall when you had discussions
6 with Captain Meek about the adjudication of the 419
7 complaint?

8 A I don't recall when I had the discussion,
9 but we would have had discussions.

10 Q Well, do you recall what you discussed --
11 well, let me ask it this way.

12 Do you recall how many conversations you may
13 have had with Captain Meek about the adjudication of
14 the 419 complaint?

15 A I'd say it was more than one.

16 Q Was it more than five?

17 A I don't know if it was five, but a couple of
18 times.

19 Q Did you have discussions with her before she
20 started preparing the Letter of Transmittal?

21 A Well, I don't know because I don't know when
22 she started preparing it.

23 Q Well, did she at some point tell you hey,
24 Commander, I'm going to start writing the Letter of
25 Transmittal, do you have any comments or concerns

1 that I should be concerned about?

2 A That's not the way that conversation would
3 go.

4 Q Tell me how the conversation went down.

5 A So I don't know about that one, but
6 typically, when we have complaints that are such -- I
7 mean, these were high profile, right, but it's just
8 to differentiate between the lower-level stuff.

9 A lot of the captains would call to kind of
10 give us a heads-up in terms of where -- as they
11 review this complaint where they see it headed in
12 terms of potentially adjudicate -- what they're going
13 to potentially be recommending for adjudication.
14 Captains will do that routinely.

15 Q Do you remember if she contacted you and
16 talked to you about the 419 complaint and how she saw
17 it was going to be adjudicated?

18 A Potentially, yes, and basically I remember
19 there are some things that she said hey, some of this
20 stuff, it's going to be not resolved and some of it
21 is going to be unfounded based on the evidence in the
22 investigation.

23 Q Did you do anything other than just these
24 conversations with her about, you know, sort of the
25 end result adjudication to guide her in how the

1 department was going to adjudicate the complaints?

2 A No. We don't guide on how the department is
3 going to adjudicate it, but what would have happened
4 is that she may have once -- go ahead and complete
5 the LOT, send it up.

6 I think she may have sent us a draft in
7 terms of how she sees it. I think we did -- I did
8 recommend to her you might want to not use these
9 words or something to that effect.

10 But the end adjudication, the ultimate
11 recommendation in terms of what she's recommending in
12 terms of sustained, unfounded, whatever the case is,
13 was theirs. It's just the language in there because
14 a lot of times with captains, they'll put
15 inappropriate language in the Letter of Transmittals.

16 Q Other than you, do you recall whether
17 anybody else within the department provided any
18 language or guidance as to how she should adjudicate
19 the 419 complaint?

20 A Again, we don't tell her how to adjudicate
21 it because she's making recommendations. The
22 language in it in terms of the language that's used
23 to write the LOT, we might tell her that that
24 shouldn't be there, you don't want to say that or
25 better word this because there are times captains

1 write LOTs and they're confusing as heck, so that
2 kind of insight, and that's what we're supposed to
3 do.

4 Q Did you ever send a copy of her draft Letter
5 of Transmittal to Employee Relations Group?

6 A Wouldn't do that. No.

7 Q Did you ever send a draft of her Letter of
8 Transmittal to risk management?

9 A No, I did not.

10 Q Do you know whether that was ever done?

11 A I don't know.

12 Q Do you know whether she was asked to do
13 that?

14 A I don't know.

15 Q Did she ever tell you she was asked to do
16 that?

17 A To send a draft to risk management?

18 Q Yes.

19 A No.

20 Q Have you ever heard of that being done?

21 A This is the first.

22 Q So the Letter of Transmittal, at some point
23 she finalized it and sent it to you; right?

24 A Those are her -- yes -- well, finalized from
25 her standpoint, yes.

1 Q Correct. And she sent it up the chain of
2 command to you; right?

3 A That would be true.

4 Q And then you have the opportunity to read
5 it; right?

6 A That is correct.

7 Q And you review it to make sure it's
8 accurate?

9 A Well, I review it to see if I concur with
10 it.

11 Q Well, do you check it for accuracy, too?

12 A Well, to some degree, that's right. Concur
13 and accuracy is a different story.

14 Q I understand that. That's why I'm asking it
15 the way I'm asking it.

16 A Accurate only from my standpoint from the
17 way I understand it.

18 Q Okay. So is the answer yes, you check it
19 for accuracy to a certain degree?

20 A To a certain degree, yes, sir.

21 Q Fair enough.

22 And if you find something that's inaccurate
23 in there, you would certainly ask her to clarify
24 that; right?

25 A That is correct; and, in fact, that's why we

1 did the initial -- we talked about the drafts in
2 terms of discussions.

3 When she sent me a draft earlier, said hey,
4 this is where I'm going, I might tell her no, that's
5 not quite accurate, there's probably a different way
6 to word that, that kind of stuff.

7 Q Well, do you remember her putting something
8 in the draft that you felt was inaccurate?

9 A I don't know if it was inaccurate or whether
10 it was appropriate, but I can tell you yes -- I don't
11 know specifically what it was, but I know I had to
12 kick it back the first time that she sent it, hey,
13 what do you think about this.

14 Q How many times did she send it up the chain
15 and you kicked it back?

16 A Once, maybe twice, before the final one came
17 through, yeah.

18 Q So when you kicked it back to her, did you
19 write some notes on it? Well, how did you do it, I
20 guess.

21 A I may have talked to her or I may have even
22 written something. I don't remember. I don't
23 remember.

24 Q Okay. Well, if you wrote something on it,
25 would you have kept that?

1 A No.

2 Q Would you have sent it to her somehow?

3 A Yes.

4 Q How would you have sent it to her?

5 A Probably given it to her, probably would
6 have given it to her because, again, she would have
7 e-mailed a draft.

8 I don't think I saw a hard copy. She would
9 have e-mailed that to me, and then I would have
10 called her and had that discussion with her.

11 Q Do you still have that e-mail?

12 A If she e-mailed it, I would have it. I
13 remember seeing a draft. Whether it was hard copy or
14 e-mail I don't remember or if she brought it to me.
15 It could have been either one. She may have brought
16 it to me.

17 If she brought it to me, then I wrote on it.
18 If she e-mailed it to me, then I would have called
19 her, but I just don't remember which one it was.

20 Q But as you sit here today, you don't have a
21 specific recollection of what it was about the drafts
22 that you felt was either inaccurate or maybe could
23 have been worded differently?

24 A That is correct. I just don't.

25 Q And when we're talking about the complaint,

1 are we talking about both the 419 complaint and the
2 614 complaint or are we just -- is that just in
3 reference to the 419 complaint?

4 A Well, I thought the questions you were
5 asking me were before the 419 complaint.

6 Q That's fair, and that's what I was talking
7 about.

8 And what about the 614 complaint? Were
9 there also -- did she also send you a draft?

10 A I would say the same thing probably applied
11 to that, too.

12 Q Once or twice she --

13 A Well, I don't know if it was once --
14 probably once. Yeah. I know it wasn't like perfect
15 the first time so...

16 Q All right. And again, do you recall as to
17 the 614 complaint something that you felt needed to
18 be reworked?

19 A Something had to be reworked. I don't
20 remember specifically what it was because
21 sometimes -- I mean, in terms of edits, that kind of
22 stuff happens, especially if she asked me to look at
23 it before signature.

24 And that's something that captains will do
25 commonly. You know, they'll say hey, do you mind

1 taking a look at this before I send it through.

2 Q All right. Other than just you two -- "you
3 two" meaning you and Captain Meek -- is there anybody
4 else that you're aware of that worked on the
5 adjudication of this 419 complaint?

6 A So let me see. That would be it because at
7 the time I was a commander, so I would have been the
8 commander.

9 And then in terms of process, it would have
10 gone from me -- there was no sustained allegation, so
11 I think that would have went to Internal Affairs.

12 And since there's no sustained allegations,
13 I'm not sure it ever went to the chief of police.
14 No, because there was no sustained allegations.

15 Q If you look in your book here, we previously
16 marked as Exhibit 7, the Complaint Adjudication Form
17 and the Letter of Transmittal for the 419 complaint.
18 Take a minute and look at that.

19 A The complaint adjudication. Got you.

20 (Pause for review of document.)

21 THE REPORTER: Can we take a break?

22 MR. SALUTE: Yes.

23 (A recess was taken.)

24 MR. SALUTE: Back on the record.

25 Q Did you have a chance to look at Exhibit 7

1 there?

2 A I did.

3 Q And on the first page of Exhibit 7 there,
4 that's the Complaint Adjudication Form; correct?

5 A Correct.

6 Q And on the bottom there is your signature;
7 correct?

8 A Correct.

9 Q Next to your signature there there's a date;
10 correct?

11 A Correct.

12 Q And it says 2-5-18?

13 A Correct.

14 Q So that would have been the date that you
15 would have signed this Complaint Adjudication Form?

16 A That would be the date that I concurred,
17 yes.

18 Q And I'm getting to that.

19 Next to your signature there's a box that
20 says "concur"?

21 A Correct.

22 Q And when you say you concur, what does that
23 mean?

24 A It means that I concur with the proposed
25 adjudication which is in the Letter of Transmittal.

1 Q All right, and did you read and review the
2 Letter of Transmittal?

3 A At the time, yes.

4 Q All right. Well, now having reviewed it, is
5 there anything that you believe now, sitting here
6 today, is inaccurate about the Letter of Transmittal?

7 A No.

8 Q Turn to page -- at the top it says page 24,
9 and in the second full paragraph there, it says,
10 "After a critical review of all of the material in
11 the investigation as well as being privy to the daily
12 issues of BDCS, it is apparent to the adjudicator
13 that these allegations are retaliatory in nature.
14 They appear to be coordinated and feed off each
15 other, and they are self-serving."

16 See that?

17 A I do.

18 Q So you read that when reviewed this Letter
19 of Transmittal?

20 A I did.

21 Q So you agree with that statement?

22 A I wouldn't necessarily agree with it, but,
23 again, the Letter of Transmittal is the commanding
24 officer -- they could give their opinion -- talk
25 about what their perceptions are.

1 As the commanding officer, I'm not the one
2 who's writing the Letter of Transmittal. I don't
3 necessarily have to agree with everything.

4 I just want to make sure that what's being
5 put in there is that it's appropriate for the Letter
6 of Transmittal.

7 So this was -- I personally would not have
8 put that in there, but, again, my concurrence is with
9 the adjudication, which is sustained, exonerated, not
10 sustained, whatever the case is, and if I see
11 anything that's glaring that's inappropriate for a
12 Letter of Transmittal.

13 Q But you never told her to take that out;
14 right?

15 A And I wouldn't.

16 Q And isn't it true that that's the official
17 department's position with regard to the adjudication
18 of this complaint?

19 MS. FRATIANNE: Vague, lacks foundation, assumes
20 facts not in evidence.

21 THE WITNESS: The adjudication, the department's
22 official adjudication, is what's on the adjudication,
23 Complaint Adjudication Form.

24 Q BY MR. SALUTE: Okay. So in the Complaint
25 Adjudication Form, if you look at the first page

1 there, it says "See Letter of Transmittal"; right?

2 A That is correct.

3 Q And so that's the rationale for the
4 decision; right?

5 A That's the captain's rationale, yes.

6 Q And that's something you concurred with;
7 right?

8 A I concurred -- well, again, I would not
9 necessarily -- there are certain things that the
10 captain may write in there that it's not
11 inappropriate but I wouldn't necessarily agree with
12 it. I would not -- from my style, I would not have
13 put something like that in there, but that doesn't
14 make it wrong.

15 Q Okay. Is it your testimony that the Letter
16 of Transmittal is not the department's official
17 position with regard to adjudication of this
18 complaint?

19 MS. FRATIANNE: Vague.

20 THE WITNESS: So again, the adjudication form is
21 the department's response, is the official
22 adjudication.

23 The Letter of Transmittal -- the purpose of
24 the Letter of Transmittal is for the captain or
25 whoever that person is that's writing the Letter of

1 Transmittal, is for them to give their rationale.

2 It is not my position or the reviewing
3 authority's position to tell a captain, oh, no, don't
4 write that, don't write that, don't -- if it's a
5 style issue.

6 What we will tell them is that that is
7 totally inappropriate to put in there or you need to
8 better explain this because it's unclear.

9 Q BY MR. SALUTE: So isn't it true, then, that
10 the Letter of Transmittal is the -- well, let me back
11 up.

12 So the captain has the authority to write
13 the Letter of Transmittal; right?

14 A That is correct.

15 Q And the captain is acting on behalf of the
16 department in writing that Letter of Transmittal;
17 correct?

18 A Well, yes, you could say that. Yeah, yeah.

19 Q And so when you are approving it, you're
20 approving the captain's position; right?

21 A Well, I'm approving the adjudication, right,
22 again, if the Letter of Transmittal gets to the
23 captain's rationale, the captain's thought process in
24 arriving at these findings, at these proposed
25 findings.

1 Q But in any event, you concurred with the
2 proposed penalty and the Letter of Transmittal;
3 right?

4 A I concurred with the adjudication form, the
5 proposed adjudication, which are not resolved,
6 unfounded, sustained, not sustained. That is what I
7 concur, that's what I'm concurring with.

8 In terms of the actual language in the
9 Letter of Transmittal, that is the captain explaining
10 how he or she got to that point.

11 Where I would have a concern with is if
12 there was something wrong, literally wrong that was
13 put in there, and I would suggest to them that's not
14 true or that is inappropriate for you to put in
15 there, and that needs to be taken out.

16 And if the captain disagrees with that, then
17 I in turn would -- if the captain decides no, I'm not
18 going to change it, which they have the prerogative
19 to do so because it's their thought process, then I
20 would, in turn, write a military endorsement.

21 Q Did you do that?

22 A No, I didn't because there was nothing wrong
23 or inappropriate about what the captain was putting
24 in there, in the Letter of Transmittal.

25 Q Right. She wrote --

1 A But again, I don't necessarily -- again, I
2 would have worded some things differently, but that's
3 me, that's my style.

4 Q What issue did you take with that language?

5 MS. FRATIANNE: Assumes facts not in evidence.

6 THE WITNESS: There's no proof that the
7 allegations are retaliatory, and the reason I say
8 there's no proof that the allegations are retaliatory
9 is because when you look at the findings, it's not
10 resolved. We can't say one way or the other that it
11 happened or it did not happen.

12 Q BY MR. SALUTE: So that's an untrue
13 statement?

14 MS. FRATIANNE: Misstates the witness's
15 testimony.

16 Q BY MR. SALUTE: I'm asking you. Is that an
17 untrue statement that she put in here.

18 A No. I'm not saying it's untrue. I'm saying
19 I would not put it in there because there's no proof
20 that the actions are retaliatory.

21 It's like me turning to Ray and saying what
22 you're doing is retaliatory. I can't prove that;
23 right?

24 Q What would you have needed to prove it?

25 MS. FRATIANNE: Lacks foundation, calls for

1 speculation, vague.

2 You can answer if you can.

3 THE WITNESS: What would I have needed to prove
4 that they were retaliating?

5 Q BY MR. SALUTE: Yes.

6 A If I had evidence of someone saying I'm
7 going to do this -- if he does it, I'm going to do
8 this or the fact that he did that, I'm going to do
9 this.

10 Q So let me ask you this: Why didn't you
11 military endorse it?

12 A I didn't because the proposed -- again, the
13 allegation -- the particular counts that were deemed
14 to be not resolved, I was in support of those.

15 The counts that were sustained -- that were
16 unfounded, I agreed with those. With regards to that
17 particular paragraph, that was the captain's --
18 that's her prerogative.

19 That is her perception based on -- again,
20 she talked about this critical review, the materials
21 and an investigation, all this kind of stuff, and
22 being privy to daily issues of the Bomb Detection K-9
23 Section, BDCS, I'm not privy to the daily issues of
24 the Bomb Detection K-9 Section, not at my level. She
25 would be, and then the lieutenant had an even closer

1 review, but not me.

2 So she is making that determination based on
3 her experience. That's exactly what she said there,
4 but I cannot say that she's wrong.

5 I'm just telling you that from my
6 perspective, I would not have written that, but that
7 doesn't mean that she's wrong.

8 Q Did you ever tell her not to use that
9 language?

10 A No, I didn't.

11 Q Why not?

12 A Because it would be inappropriate for me to
13 tell her that because she is privy to that same
14 thing. Being privy to the daily issues of the BDCS
15 is apparent to that adjudicator.

16 I can't tell her -- because she's the one
17 who's privy to the daily issues, I can't tell her
18 what's apparent to her and what's not apparent to
19 her.

20 Q Did you ever ask her about that statement?

21 A I don't think so. I don't think I did for
22 the same reason. That was part of her rationale.
23 She's giving her rationale.

24 Q So as far as you recall, you got the Letter
25 of Transmittal, at least a draft of it, once or twice

1 before it was finalized; right?

2 A Yes.

3 Q And at no point during your review of the
4 Letter of Transmittal did you ever say to her hey, I
5 think you should change this or I think that's
6 inappropriate or anything like that; right?

7 A As it pertains to that particular paragraph?

8 Q Correct.

9 A So again, I don't know. I couldn't tell you
10 if that paragraph was in there the first time around,
11 the second time around, the third time.

12 I can tell you when I signed the
13 adjudication page, it obviously was there because I
14 would have read it, all right, so it was there.

15 Q And you never kicked it back to her and told
16 her to take it out.

17 A No, I did not for the same reason I just
18 went through with you.

19 Q I wanted to switch gears for a second, and I
20 wanted to talk about the request to reassign Ray from
21 Emergency Services Division; okay?

22 A Yes, sir.

23 Q Now, what was your role in the reassignment?

24 MS. FRATIANNE: Assumes facts not in evidence.

25 Q BY MR. SALUTE: If you had a role.

1 A I would have made a recommendation based on
2 the nature of the allegations, based on the fact that
3 this was a very small work environment, the nature of
4 the work that's involved there.

5 The fact is I needed to have leadership,
6 visible leadership. I needed to have an atmosphere
7 where the employees -- where the employees lacked
8 confidence in their supervision, where there's a
9 level of trust by the employees of supervision.

10 And based on everything -- again, like I
11 said, the nature of the allegations, it made sense to
12 me that we could not, based on all those things I
13 just talked about, we could not have Ray remain in
14 this environment pending the outcome of this -- while
15 this whole thing was being adjudicated or
16 investigated. It just could not happen.

17 It was a toxic work environment, you have
18 multiple employees that had these issues.

19 Q BY MR. SALUTE: Okay. So getting back to my
20 question, did you request the reassignment or did
21 Meek request it? I'm trying to understand how that
22 event occurred.

23 A So it might have been -- I'm not sure if I
24 told her initially to complete the paperwork or if
25 she just recommended it, but either way, I approved

1 the requesting of the reassignment.

2 And the way the process is is it has to come
3 from the captain as the initiator and then I would
4 approve it, and then it works its way up the chain.
5 That's the way that happens.

6 Q As you sit here today, is it your
7 recollection that Captain Meek is the one that
8 requested it and then it was approved by you or how
9 did --

10 A No, I didn't say that. I said as I recall,
11 I don't remember if she initially said it or I'm the
12 one that told her to do it, but the way the process
13 works is that the captain would have to sign the --
14 just like it indicates there, and then I approve it
15 to continue to go up the chain.

16 Now, whether or not I was the one who first
17 told her get the paperwork going, I don't remember.

18 Q All right.

19 A And I possibly very well did that. I just
20 don't remember specifically.

21 Q Before the reassignment was -- or the
22 paperwork was prepared, did you contact anybody at
23 either the Office of Administrative Services or
24 Employee Relations Group or anything like that to get
25 their guidance on what should be done with Ray?

1 A I don't know if I did myself. I don't
2 think -- I did not contact Office of Administrative
3 Services, I can tell you that. I don't think I
4 contacted Employee Relations. I may have directed
5 Kathy -- Captain Meek to contact Employee Relations
6 Group. Yeah.

7 Q Okay. Do you remember any conversations
8 that you and she had about her contacting Employee
9 Relations Group or Office of Administrative Services?

10 A So I don't specifically remember it, but I
11 can tell you that that would make sense, that once
12 she made those contacts, she would have discussed
13 that with me. That makes sense.

14 Q Did you or she need their approval in order
15 to request a reassignment?

16 A It's not necessarily an approval, it's more
17 a discussion because if the reassignment is not
18 within policy, within -- you know, the part of the
19 policy that doesn't make sense that it's true and it
20 wouldn't get approved, so you want to have those
21 discussions before you actually begin the paperwork.

22 And that's something that we routinely do.
23 We would discuss these issues with Employee
24 Relations, and Employee Relations discusses it with
25 the Office of Administrative Services.

1 Q And if you look at -- we previously marked
2 as Exhibit 8 the Request For Reassignment.

3 A Well, the Request For Reassignment was
4 actually --

5 Q Right here.

6 A The 15.2, the intradepartmental
7 correspondence.

8 Q And that's marked on the bottom of the page
9 as Garvin 10; right?

10 A Garvin 10, yes.

11 Q Okay. And this is something you signed off
12 on; correct?

13 A That is correct.

14 Q As having approved it; right?

15 A I approved the Request For Reassignment.

16 Q Okay. And in the reassignment request, it
17 says that "the reassignment is based upon the
18 immediate needs and best interests of the Department
19 due to the fact that Lieutenant Garvin is the subject
20 of a personnel complaint involving a hostile work
21 environment, CF No. 17-00419." Right?

22 A Yes, sir.

23 Q Okay. And so isn't it true that the reason
24 for the reassignment was because this personnel
25 complaint, the 419 complaint, had been initiated

1 against him?

2 A That is true.

3 Q That's why it was being requested; right?

4 A That's true, just like it says there.

5 Q Okay. And the date of this request is
6 March 2nd of 2017; right?

7 A That is true.

8 Q Now, in addition to the request for
9 reassignment, there was also an assignment to
10 nonsupervisory duties, and that's marked in Exhibit 8
11 as Garvin 13. Do you see that?

12 A I see it.

13 Q Did you have anything to do with Garvin
14 having his nonsupervisory duties essentially
15 suspended or taken away?

16 A I don't remember specifically that, but this
17 makes sense because of everything that's going on.
18 This was something that was not --

19 I obviously didn't write this. This was an
20 order from Captain Meek which she has the authority
21 to do, giving the authority to Ray Garvin, and it's
22 signed by Captain Meek and it's signed by Ray Garvin
23 at the time, so...

24 Q Does assigning somebody who's a supervisor
25 to nonsupervisory duties under Los Angeles Police

1 Department policy constitute an adverse employment
2 action?

3 MS. FRATIANNE: Calls for speculation, lacks
4 foundation, calls for a legal conclusion.

5 You can answer if you can.

6 THE WITNESS: It does not based on the
7 circumstances, and given these circumstances, it
8 would be very much appropriate.

9 Q BY MR. SALUTE: Okay. Does a Request For
10 Reassignment of a Lieutenant II to a Lieutenant I
11 constitute an adverse employment action under LAPD
12 policy?

13 MS. FRATIANNE: Same objections.

14 THE WITNESS: It does not necessarily call
15 for -- that is not -- okay, repeat the question again
16 for me, please?

17 (The record was read as follows:

18 "Does a Request For Reassignment of a
19 Lieutenant II to a Lieutenant I constitute an
20 adverse employment action under LAPD policy?")

21 THE WITNESS: The answer to that is no.

22 Q BY MR. SALUTE: Is that something positive,
23 for an employee to be reassigned from a Lieutenant II
24 to a Lieutenant I?

25 MS. FRATIANNE: Vague.

1 THE WITNESS: Well, it may not be positive, but
2 that doesn't mean necessarily that it's retaliatory.

3 Q BY MR. SALUTE: I guess we're kind of mixing
4 up definitions here, but I'm not going to argue with
5 you about that.

6 I just want to know is it something positive
7 or negative to be reassigned from a Lieutenant II to
8 a Lieutenant I --

9 MS. FRATIANNE: Vague.

10 Q BY MR. SALUTE: -- in the LAPD.

11 A In the Los Angeles Police Department, it
12 could be viewed as negative going from a Lieutenant
13 II to -- it could be viewed as negative.

14 And the reason I say it could be is because
15 it depends on the reason why the employee is being
16 reassigned from a II to a I.

17 Q Okay. Well, let me ask it this way: Is an
18 involuntary reassignment from a Lieutenant II to
19 Lieutenant I something positive for an employee?

20 A An involuntary reassignment, it could be
21 viewed as negative.

22 Q Can it ever be viewed as positive, an
23 involuntary reassignment?

24 MS. FRATIANNE: Vague, lacks foundation.

25 You can answer.

1 THE WITNESS: Can an involuntary reassignment
2 ever be viewed as positive? Probably unlikely,
3 nothing I can think of off the top of my head at this
4 point.

5 Q BY MR. SALUTE: Right, because Lieutenant II
6 to a Lieutenant I loses pay; right?

7 MS. FRATIANNE: Vague, lacks foundation.

8 THE WITNESS: Not necessarily. I can explain
9 that if you want.

10 Q BY MR. SALUTE: That's all right.

11 And what about being assigned -- if you're a
12 lieutenant and you're assigned nonsupervisory duties,
13 is that something positive or negative in the LAPD?

14 MS. FRATIANNE: Vague, lacks foundation.

15 Q BY MR. SALUTE: Involuntarily being assigned
16 to nonsupervisory duties.

17 MS. FRATIANNE: Same objections.

18 THE WITNESS: Could be viewed as negative.

19 Q BY MR. SALUTE: Can you think of any reason
20 how it could be positive?

21 A I guess it depends on whose perspective
22 you're looking at. Somebody could see it as less
23 work.

24 Q Why wasn't Ray loaned out to another
25 position within Emergency Services Division rather

1 than being reassigned?

2 A Well, a couple of things. We look for where
3 the needs are. If there's no need for another
4 lieutenant, a Lieutenant II lieutenant, in Emergency
5 Services Division, that's number one.

6 And the decision was made to reassign him to
7 one of the operational divisions or operational
8 areas.

9 Q Why wasn't he reassigned back to that
10 position after the complaint was adjudicated?

11 A There was no vacancy, and that's a decision
12 by the chief of police.

13 Q You're saying which chief made that
14 decision?

15 A No, the decision to reassign an employee
16 back, those are decisions made by the chief of
17 police.

18 Q Okay. Do you know how that decision is
19 made?

20 MS. FRATIANNE: Vague, calls for speculation.

21 Do you know?

22 THE WITNESS: It depends on the circumstances,
23 but every situation is different.

24 Q BY MR. SALUTE: Do you know why there was no
25 vacancy?

1 A Because the position was filled.

2 Q Okay. And when was it filled?

3 A I would have to check for the dates to see
4 when the new lieutenant came into that position.

5 Q All right. Well, it just so happens that if
6 you look in the book in front of you, 13, there's --
7 do you know what this is?

8 A Pay grade, advancement and transfer
9 opportunities.

10 Q And if you look at page 2 of that, do you
11 see a listing there for Lieutenant II of the Bomb
12 Detection K-9 Section?

13 A Correct, as a vacancy.

14 Q Right, so when was it listed as a vacancy?

15 A According to this, August 14, 2017.

16 Q Right. So why was it listed for a vacancy
17 in August of 2017?

18 MS. FRATIANNE: Vague, lacks foundation, calls
19 for speculation.

20 If you know.

21 THE WITNESS: The position was vacant. There
22 was not a Lieutenant II in there.

23 Q BY MR. SALUTE: Because Ray had been
24 removed; right?

25 A Well, he had been removed -- he had been

1 reassigned or removed. I'd have to go back -- I'll
2 just go back to --

3 Q Tab 11.

4 A He had been removed back in March is when we
5 did the paperwork to remove him. I don't know
6 exactly what date it took effect, but we did the
7 paperwork back in March of 2017 to remove him.

8 Q Right. From March to August, do you know
9 who filled that position?

10 MS. FRATIANNE: Assumes facts not in evidence.

11 THE WITNESS: From March to August of --

12 Q BY MR. SALUTE: 2017.

13 A 2017. What was the question?

14 Q From March 2017 to August of 2017 -- March
15 is when he got removed, August is when we see this
16 promotional opportunity listing.

17 A Um-hum.

18 Q Between those two dates, do you know who
19 filled Ray's old position at Bomb Detection K-9
20 Section?

21 A There was no one there filling a Lieutenant
22 II.

23 Q Okay. So for what, five, six months it was
24 vacant; right?

25 A That position was vacant.

1 Q Okay. Is there some reason why it couldn't
2 remain vacant while the complaints were being
3 adjudicated?

4 A Sure.

5 Q Why?

6 A Because we have a Lieutenant II -- there
7 were two sergeants and a lieutenant. It's putting an
8 undue burden onto two sergeants to be running that
9 place for that length of period of time.

10 We know that complaints are adjudicated up
11 to a year, and there's no guarantee. We don't know
12 how it's going to be adjudicated.

13 If the position is vacant, we have a
14 responsibility to make sure that the section
15 continues to run and that we have the appropriate
16 amount of people.

17 Now, there are times when positions stay
18 vacant because of budget reasons we can't fill them,
19 but when we can fill them, we fill them.

20 Q And if you look under tab 14 here, do you
21 know what this is, the Transfer Order No. 10? Do you
22 see that?

23 A Transfer Order No. 10.

24 Q And if you look on the first page of that,
25 there's a listing for Lewis; do you see that?

1 A That is correct.

2 Q And is he the one that filled the position?

3 A He's the one that was selected to fill the
4 position.

5 Q Okay. So he filled it sometime in looks
6 like October of 2017?

7 A That's the date that he would have been --
8 his assignment is effective October 1st of 2017, his
9 assignment to Bomb Detection K-9 Section.

10 Q I want to go back to your declaration which
11 we already talked in part about, but on the second
12 page of your declaration where it says -- I guess
13 it's under paragraph 3 where it says, "I also learned
14 and approved a request to lower Garvin's pay grade
15 based on his failure to satisfactorily carry out the
16 duties of his assignment as the OIC."

17 Do you contend that the reason why he was
18 transferred and reassigned out of the Emergency
19 Services Division was based on his failure to
20 satisfactorily carry out the duties of his
21 assignment?

22 A That is true based on the allegations in the
23 complaint.

24 Q Even after you adjudicated, you still
25 contend that's true?

1 A So there --

2 MS. FRATIANNE: Vague as to you adjudicated one.
3 Which one?

4 If you know, you can answer.

5 THE WITNESS: So there are a couple of things
6 here I think we finally need to just clarify.

7 Maybe there's some confusion, part of it on
8 my part. Garvin being gone -- placed from a
9 Lieutenant II to a Lieutenant I is one thing.

10 Q BY MR. SALUTE: Correct.

11 A The issue of pay is another situation. I
12 think what I was talking about -- when I say I wasn't
13 aware of that, I was not aware that his pay would
14 drop from a Lieutenant II to a Lieutenant I.

15 Q Right. I'm not talking about that. I'm
16 talking about strictly his assignment and my question
17 to you was that at the time -- because you requested
18 it, too; right? You requested that he be reassigned;
19 correct?

20 A Right, that is correct.

21 Q So at the time that you requested that he be
22 reassigned, is it your contention that that was done
23 based on his failure to satisfactorily carry out the
24 duties of his assignment?

25 A That is correct.

1 Q Okay. And my question is after the
2 complaint was adjudicated, the 419 complaint, do you
3 still believe that's true?

4 A Actually, I do.

5 Q Why is that?

6 A Because as I said earlier, his -- the people
7 there, there was clearly an issue of trust and
8 leadership and there's no way even after the
9 adjudication of his complaint that we could have put
10 Ray Garvin back in there.

11 The team had lost confidence and trust in
12 him, in his leadership abilities, and it's just not
13 about one person. I have to be concerned as the
14 commanding officer about what's going on in the
15 atmosphere, the chemistry in that particular unit, so
16 it's not just about one person.

17 Q Okay. Who in the team do you believe lost
18 confidence in Ray's abilities to lead that unit?

19 A Well, we had several of the employees who
20 were making the -- we had the employees who were
21 making the complaints; right? And the environment
22 was toxic. The environment in Bomb Detection K-9
23 Section was toxic.

24 You had camps, you had employees who are --
25 there are camps being set up where a set of employees

1 were against other employees, lodging complaints
2 against each other, back and forth, back and forth,
3 and it has to go to the issue of the leadership
4 within that particular section.

5 Q Did you believe that some of the sergeants
6 were responsible since they were supervisors?

7 A No, I didn't. Again, the leader, the
8 Lieutenant II in that unit, was Lieutenant Garvin.
9 It's up to him to hold everyone accountable, the
10 sergeants and the officers.

11 Q You didn't believe that any of the sergeants
12 were responsible for how that unit was being led.

13 A How the unit was being led?

14 Q Yes.

15 A The unit being led by Lieutenant Garvin.
16 They work for him.

17 Q My question was you didn't believe that the
18 sergeants were responsible at all for how that unit
19 was being led?

20 A I'm going to -- again, my response is going
21 to be the person that leads the section is the
22 lieutenant. Everyone, what's been exhibited is
23 what's being led from the top.

24 And even if the sergeants may have borne
25 some responsibility, but whatever they were doing,

1 Lieutenant Garvin has to be on top of that as the
2 head of that section. He's the one that's there day
3 in and day out. If they were doing things wrong,
4 it's up to him to address that behavior.

5 Q Why were none of the sergeants removed into
6 other positions?

7 MS. FRATIANNE: Lacks foundation, assumes facts
8 not in evidence, calls for speculation.

9 If you know, you can answer.

10 THE WITNESS: So looking at the allegations,
11 they were not allegations of that kind of a nature
12 against any of the sergeants. They were against
13 Lieutenant Garvin.

14 There was one allegation against Sergeant
15 [REDACTED] that was unfounded, but again, that was not an
16 allegation that would have resulted in moving anyone
17 out of there.

18 Q BY MR. SALUTE: So you're saying that
19 neither Franco nor Salinas contended that any of the
20 other supervisors within BDCS created a hostile work
21 environment. Is that what you're contending?

22 MS. FRATIANNE: Misstates his testimony.

23 THE WITNESS: I have no indication from Franco
24 or Salinas that the sergeants were creating a hostile
25 work environment.

1 Q BY MR. SALUTE: Isn't it true that Salinas
2 was claiming that [REDACTED] was discriminating against
3 her based on her pregnancy?

4 A The allegation --

5 Q Let me back up. First of all, isn't it
6 true -- let me start it this way.

7 Isn't it true that Salinas alleged that
8 [REDACTED] made an improper remark to her about her
9 pregnancy condition?

10 A That statement, again, that came up during
11 the course of the investigation when Internal Affairs
12 was interviewing Salinas and that statement itself is
13 not grounds to remove an employee, to remove a
14 sergeant. You do the investigation.

15 The allegation is that Sergeant [REDACTED] --
16 which is what she reported to Internal Affairs when
17 she was interviewed -- while on duty made an improper
18 remark when he stated "Why can't Salinas do it? She
19 doesn't do anything around here anyway."

20 That's not going to cause an employee to be
21 removed. The context of it is that they were
22 asking -- my understanding is that they were asking
23 for someone else -- they were going to give some
24 duties to someone else, and he made that comment.
25 It's an inappropriate comment coming from a

1 supervisor. It's an inappropriate comment coming
2 from a supervisor if indeed that's true that it was
3 made.

4 Q So you didn't believe that that was
5 sufficient grounds to remove him as a supervisor;
6 right?

7 A No, no, sir.

8 Q And isn't it true that other officers within
9 the unit alleged that Sergeant [REDACTED] had made some
10 inappropriate comments and created a hostile work
11 environment?

12 MS. FRATIANNE: Vague, lacks foundation, assumes
13 facts not in evidence.

14 THE WITNESS: I'm not aware of that.

15 Q BY MR. SALUTE: Isn't it true that Mark
16 Sauvao complained that Garvin, [REDACTED] and [REDACTED] all
17 bullied, harassed, made derogatory racial remarks,
18 and discriminated against him based on his race?

19 MS. FRATIANNE: Same objection.

20 If you know.

21 THE WITNESS: I don't know if that's an
22 allegation that Sauvao made, but if he did, that's
23 why we investigate it. And if indeed that's the part
24 where he made that --

25 MR. SALUTE: Well, look at -- this is one of the

1 addenda items, and it's marked as 1A.

2 THE WITNESS: In what -- that's in the second --
3 is that the second?

4 Q BY MR. SALUTE: Yes, 614 complaint.

5 A 614 complaint. Okay.

6 Q But if you look -- let's see, one, two,
7 three -- third paragraph down, see there? My
8 question is isn't it true that he made those
9 allegations against Garvin, [REDACTED] and [REDACTED]?

10 MS. FRATIANNE: Same objection. The document
11 speaks for itself.

12 THE WITNESS: Yes. He said that in a 15.7
13 employee's report that he wrote. That's what he's
14 alleging.

15 Q BY MR. SALUTE: Right.

16 A This -- he made that, but we're not going to
17 remove a supervisor because an employee says that.
18 We're going to investigate it. Not because one
19 employee comes and says, oh, yeah, this entire --
20 everyone here says we're going to take the entire
21 supervisor team out of there.

22 We're going to investigate it and that's
23 what is going on. I'm not sure if this has already
24 been adjudicated on.

25 Actually, I think it has been adjudicated.

1 I'm not sure, but we'll investigate it.

2 Q But in any event, he was accusing all of
3 them of things that if true would violate LAPD
4 policy; right?

5 A That is true.

6 Q And you took the allegations against Garvin
7 from Salinas and Franco to be true and moved him;
8 right?

9 A Not true. I didn't take them to be true
10 because --

11 Q Well, how did you take it?

12 A It had to be investigated. Based on the
13 nature of the allegations, based on the fact that you
14 had camps developing inside Bomb Detection K-9
15 Section, based on the fact there was a loss of
16 confidence in his leadership of the section, that is
17 the reason we requested the reassignment and the
18 transfer.

19 Q Did Ray ever talk to you about any concerns
20 that he had that he might be retaliated against by
21 Sauvao or others within the Bomb Detection K-9
22 Section because he was the one that helped to
23 initiate the tampering complaint against Sauvao?

24 MS. FRATIANNE: Did he say that to you?

25 THE WITNESS: Did he say that to me? I don't

1 recall Ray saying that to me, and there were multiple
2 people involved with the initiation. It wasn't just
3 Ray. It started with Stark.

4 Q BY MR. SALUTE: Did you ever have any
5 concerns that Sauvao or others within the unit may
6 retaliate against Ray because he had initiated that
7 complaint?

8 A No.

9 MS. FRATIANNE: Lacks foundation, misstates the
10 evidence, misstates his testimony.

11 Q BY MR. SALUTE: Do you recall having a
12 meeting down at the Bomb Detection K-9 Section with
13 all the officers in the unit around 2017?

14 A I've had several meetings with all the
15 officers in Bomb K-9 Section and I don't know which
16 one this would be. I had multiple meetings with
17 them.

18 Q Well, do you remember there being -- okay.
19 During a meeting -- or withdrawn.

20 Do you recall one time where he showed up to
21 the Bomb Detection K-9 offices after some kind of a
22 session with Dr. Campbell, and you talked to Ray
23 about what's going on in the unit?

24 A I don't remember specifically. Could have
25 happened, but I don't remember it.

1 Q Do you recall --

2 A You said Dr. Campbell?

3 Q Dr. Campbell from BSS?

4 A (Witness shakes head.)

5 Q No?

6 A I don't remember Dr. Campbell unless the
7 person changed names. I don't remember a
8 Dr. Campbell.

9 Q Do you recall having a meeting with Ray and
10 Captain Meek where he told him that a complaint had
11 been filed against him and for his safety, he was
12 being loaned out of ESD?

13 A For his safety? No.

14 Q Did Ray ever tell you that he was concerned
15 for his safety because of some of the things that
16 Officer Sauvao had said or done?

17 A No.

18 Q Let me go talk to Ray real fast. I think
19 we're close to done.

20 A All right.

21 (A recess was taken.)

22 MR. SALUTE: Let me just say this. I don't have
23 any other questions right now; however, I am probably
24 going to move to compel some questions and some
25 documents.

1 So to that end, I won't close it with
2 respect to that stuff, but for the rest of it, I'm
3 done.

4 MS. FRATIANNE: Okay.

5 THE REPORTER: And you needed a copy?

6 MS. FRATIANNE: Please.

7 (At the hour of 5:17 P.M.
8 the deposition was concluded.)

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1 STATE OF _____)
2) ss.
3 COUNTY OF _____)
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11 I, the undersigned, say that I have read the
12 foregoing deposition, and I declare under penalty of
13 perjury that the foregoing is a true and correct
14 transcript of my testimony contained therein.
15
16
17

18 Dated this _____ day
19 of _____, 20____.
20
21

22 _____
23 HORACE ERRINGTON FRANK
24
25